

THE
PRESENT PRACTICE
AND
C O S T S
IN THE
HIGH COURT OF CHANCERY,
&c. &c.

THE
PRESENT PRACTICE
AND
C O S T S
IN THE
HIGH COURT OF CHANCERY;

WITH
Practical Directions and Remarks.

GUIDANCE OF THE SOLICITOR IN THE CONDUCTING A CAUSE,
FROM THE COMMENCEMENT TO ITS CLOSE :

IN CONDUCTING PROCEEDINGS IN LUNACY, AND MATTERS UNDER THE JURISDICTION OF THE COURT, OR OF THE LORD	CHANCELLOR; IN WHICH THE PRACTICE OF THE COURT, (AND PARTICULARLY BEFORE THE MASTER) IS FULLY EXPLAINED.
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CONTAINING A VALUABLE
COLLECTION OF USEFUL PRECEDENTS,

WITH
THE ADDITION OF THE MODERN CASES AND THE LATE ORDERS OF
COURT RELATING TO FEES.

By SAMUEL TURNER, SOLICITOR.
FIFTH EDITION.
CONSIDERABLY ENLARGED AND IMPROVED,
By ROBERT VENABLES, Esq.

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1817.

AFFIDAVITS.

ALL affidavits, except of persons admitted to prosecute or defend in *forma pauperis*, must be written on half-crown stamps, fair, and if any interlineation, or an erasure, becomes necessary, it should be pointed out to the master, who administers the oath, that he may put his initials in the margin of the affidavit where such interlineation or erasure occurs.(a)

The true place of residence, and title or profession of the person making the affidavit, must be inserted, and particularly the place where sworn, and the jurat on the right hand.

Affidavits are sworn before a master in chancery: or before a master extraordinary in the country, but not within twenty miles of London, and the town and county where sworn must be expressed. A master attends at the public office, Southampton-buildings, for the purpose of administering oaths, every day from ten till two, and from six till eight: and in the long vacation from eleven till one, except Saturday, on which day there is no attendance; but at any time the oath may be taken before a master, either at his house or chambers: affidavits must be filed with the proper officer at the affidavit office, Symonds'-inn; and to be read in court, an

(a) Ord. Canc. Bea. Ed. 65. 212.

office copy must be had for that purpose: two shillings is paid for the first side, and eight pence for every following side, exclusive of two shillings and six-pence, the duty for every four sides, the first side to contain nineteen lines, and every other side seventeen lines, and six words in each line, except the title of the cause, and schedules, which are to contain four words in a line, besides the column of figures on the right and dates and times on the left hand. And all affidavits made in support of, or to oppose any application intended to be made to the court, should be filed a sufficient time(a) before such application, so as to enable the other party to take a copy thereof.

But an affidavit that cannot be answered, as on a motion to extend an injunction to stay trial, that the plaintiff cannot go to trial with safety, till the answer comes in, it is no objection, that the affidavit was filed only the day before.(b)

A poeress was ordered to produce deeds confessed in her answer, upon honour only, being supplemental to her answer, and not upon oath: but her affidavit or deposition as a witness, must be upon oath.(c)

Affidavits made in a cause after a decree, in proceedings in the master's office, should be sworn before the master to whom the cause is referred, and not at the public office.

All affidavits to ground process must be filed before the process issues.(d) In an affidavit of service of a notice of motion on a clerk in court, the name of the clerk in court on whom the same was served must be stated; and it must likewise state that the notice was in writing: but where the notice was served on the copying clerk, or agent of the clerk in court, the name of such clerk or agent need not be stated; but such ser-

(a) 6 Ves. 432. Ord. Can. Bea. Ed. 42. 148.

(b) 8 Ves. 46.

(c) Prec. in Ch. 92. 1 P. Wms. 147.

(d) Ord. Can. Bea. Ed. 148. 8 Ves. 357.

vice must be stated to have been upon the writing clerk or agent at the clerk in court's seat, in the chancery office: and an affidavit of service of an order must state that the original order passed and entered was shewn at the time of service.(a)

For carrying an original affidavit by the register of affidavits, or his deputy to any assizes, for each day, including horse hire and expences, a fee of one guinea is allowed: for trouble, attendance, and taking security to return an original affidavit to the office, if directed by order to be delivered to the associate or clerk of assize to be used at the assizes, and which is now the practice, a fee of 6s. 8d.(b)

For swearing affidavits in causes in town 1s. is paid, in the country 2s.: and in matters not depending in court 6d. additional for the jurat.(c)

Where a whole petition was recited in an affidavit of service, the costs were ordered out of the attorney's pocket.(d)

Where affidavits in support of a petition, were sworn before the solicitor on the cause, the court dismissed the petition, and ordered the solicitor to pay the costs.(e)

And in another case the court directed the costs to be taxed as between attorney and client, and committed the solicitor, but did not deprive him of his office of master extraordinary.(g)

Lord Eldon, C. sitting on bankrupt petitions, upon an application complaining of scandalous and irrelevant matter contained in an affidavit, and praying that it might be taken off the file, or the matter expunged, delivered an opinion so learnedly upon the subject of affidavits that it may be useful, and may convey some very wholesome advice and instruction to the junior

(a) 1 Coop. Ch. Rep. 282. (b) Ord. Canc. Bea. Ed. 383.

(c) Ord. Canc. Bea. Ed. 372. 4, (d) 1 Atk. 139.

(d) 3 Atk. 813. (e) 3 Atk. 813. (g) 1 Ves. J. 194.

branches of the profession, to give his lordship's judgment *in extenso*.

His lordship speaking of affidavits generally, observed, there are some general principles which cannot be doubted: if that which is stated on an affidavit be material to the issue, it may be false, but cannot be scandalous; if relevant, it is not impertinent; though scandalous in its nature, if relevant and pertinent, it cannot be treated as scandalous; and if false, it must be dealt with in another way, but if irrelevant, and especially if also scandalous, there would be much reason to regret, that a court was not armed with the power to protect parties from the expence, and its records from the stain, which too frequently arises from the introduction of irrelevant and scandalous matter. Having read the affidavit in question, I can find no ground upon which the greater part of it can be represented as material, nor can I conceive how a great part can be described as not scandalous, bearing most cruelly upon character. Upon the ~~question~~ whether I have the power to grant this relief in bankruptcy, I have no doubt whatsoever, and I do not speak with reference to this subject of scandal, and in proceedings either in *causes* or in bankruptcy that any application by any person is necessary. The court ought to take care, that either in a suit, or in this proceeding, allegations, bearing cruelly upon the moral character of individuals, and not relevant to the subject, shall not be put upon the record, a very considerable proportion of it (the affidavit) is perfectly immaterial and irrelevant, though not scandalous; and of that some part is of such a nature, that, not being material or relevant, it must be considered scandalous. His lordship concluded by ordering the solicitor, who made the affidavit, to pay the costs of the application, and all other costs, to be taxed as *between solicitor and client*, and after payment, the affidavit to be taken off the file.

His lordship afterwards took occasion to observe, that an error had gone abroad, which it was material to correct; that *voluntary affidavits* made before a person not having the power of administering an oath, were not punishable by law. That in *Millett v. Rowse*, when his lordship was attorney general, where upon the marriage of a ward of the court, Thompson, the husband, had falsely sworn she was of age, though only fourteen, the husband was committed, and ordered to be indicted; and that although there was a difficulty in indicting for perjury, because the statute does not give the power of administering an oath, he had found authority enough for indicting, on the ground of its being *contra bonos mores*, and a misdemeanor at common law: that the husband was convicted, and the court of King's Bench sentenced him to stand in the pillory, as for wilful and corrupt perjury. (a)

AFFIDAVITS.

Affidavit of the Service of a Notice of Motion.

In Chancery,

Between John A'Gull, and others, Plaintiffs;
and

John A'Gudgeon, William Johnson,
and others, Defendants.

John Anderson, clerk to Mr. Williams, of the Inner Temple, London, solicitor for the plaintiffs in this cause, maketh oath, that he did, on Monday, the 30th day of

(a) 7 Ves. 419. 1 Ves. and Bea. 208.

(b) 15 Ves. 476. 6 Ves. 514. 18 Ves. 114.

June instant, serve Mr. Fox, who acts as clerk in court for all the defendants in this cause (*or if there are more clerks in court, then say, Mr. Douce, and Mr. Fox, as the case may be, who are all the clerks in court for the defendants*) with a notice in writing, purporting that this honourable court would be moved on Thursday, the sixth day of July then next, or so soon after as counsel could be heard, that, the said defendants, John A'Gudgeon and William Johnson, might be ordered to transfer to the accountant-general of this honourable court, in trust in this cause, the sum of 3,400l. consolidated three per cent. bank annuities, and the sum of 5,000l. four per cent. bank annuities, admitted in the answer of the said defendants to be standing in the name of their testator, Stephen Lawrence, in the pleadings in this cause named, in the books of the governor and company of the bank of England; and also the respective sums of 1862l. 6s. 10d. consolidated three per cent. bank annuities, and 605l. 4s. 2d. four per cent. bank annuities, likewise admitted by the said defendants to be standing in their names in the books of the said governor and company, and to have been purchased with part of the effects of the said testator, by delivering to and leaving with the copying clerk of the said Mr. Fox, at his seat in the six clerks' office, a true copy of such notice (*or in case there should be more than one clerk in court, and one should be personally served, then, instead of the last clause say, by delivering to and leaving with the said Mr. Douce, and with the clerk or agent of the said Mr. Fox, at his seat in the six clerks' office, true copies of such notice*).

Sworn at the public office, Southampton-buildings, this thirtieth day of June, 1810, before

John Anderson.

Affidavit to ground an Application for a Commission to assign a Guardian to a Defendant of unsound Mind.

In Chancery.

**Between Richard Heighway and others, Plaintiffs ;
and
William Pinks and others, Defendants.**

John Chase of Smithfield, in the county of Middlesex, doctor of physie, maketh oath and saith, that he hath known Mary Welch, a defendant in this cause, the wife of John Welch, for upwards of five years last past, and that during all that time the said Mary Welch hath been under the care of this deponent ; and this deponent further saith, that the said Mary Welch is a person of unsound mind, and incapable of taking care of her own affairs, or of understanding the purport or nature of a bill and answer in chancery ; and that no commission of lunacy, (to the knowledge or belief of this deponent) hath been issued against the said Mary Welch. And this deponent further saith, that the said Mary Welch is deserted by her husband.

B. Bowers.

Sworn, &c.

N. B. This affidavit must vary according to the circumstances of the case,

- **Affidavit to ground an Application for an Order, that Service of a Subpœna to hear Judgment on the Clerk in Court for an absconding Defendant, may be deemed good Service.**

In Chancery.

Between Thomas Whetham and others, Plaintiffs;
and
William Hale and others, Defendants.

Giles Heysham of the Inner Temple, London, gentleman, maketh oath, and saith, that he did, on or about the 2d day of this instant April, apply to Mr. Estcourt in Lincoln's-inn, the solicitor for the defendant William Hale in this cause, to receive a subpœna to hear judgment in this cause, for the said defendant, which the said Mr. Estcourt refused to do; and thereupon this deponent desired to be informed by the said Mr. Estcourt where the said defendant resided, or was to be found, in order that he might be served with the said subpœna; when the said Mr. Estcourt informed this deponent that he could not tell where the said defendant was to be found, but the said Mr. Estcourt referred this deponent to Mr. William Welch of Milk-street, London, ironmonger, by whom Mr. Estcourt said he was employed for the said defendant in this suit. And this deponent further saith, that he did afterwards apply to the said Mr. William Welch, and enquired of him, where the said defendant now resided, or was to be found, in order that the said subpœna might be served on him, when the said Mr. Welch informed this deponent that

he did not know where the said defendant now resided, or was to be found: and this deponent further saith, that he afterwards applied to Mr. Cheveley, the clerk in court for the said defendant in this cause, to accept the subpoena to hear judgment for the said defendant, which the said Mr. Cheveley refused to do, and thereupon this deponent enquired of the said Mr. Cheveley, where the said defendant lived, or was to be found, when the said Mr. Cheveley informed this deponent that he did not know the said defendant, nor where he lived or was to be found; and the said Mr. Cheveley referred this deponent to the said Mr. Welch, by whom he said he was employed in this cause; and this deponent further saith, that he afterwards enquired at several places, where this deponent was informed there was a probability of learning the said defendant's place of residence, but this deponent could not, on such enquiries, discover where the said defendant resided or was to be found.

Giles Heysbam.

Sworn at the public office, &c.

Affidavit of Service of an Order that Service of a Subpoena to hear Judgment on the Clerk in Court may be deemed good Service; and likewise of the Service of the Subpoena on the Clerk in Court.

In Chancery.

Between Thomas Whetham and others, Plaintiffs;

and

William Hale and others, Defendants.

Giles Heysbam of the Inner Temple, London, gentleman, maketh oath and saith, that he did, on the 15th

day of April instant, personally serve Mr. Chester who acts as clerk in court for the defendant, William Hale in this cause, as this deponent has been informed and believes, with an order made in this cause by his honour the master of the rolls, on the 10th day of May last, duly passed and entered, whereby it was ordered, that service of the subpœna to hear judgment in this cause, on the clerk in court for the said defendant, William Hale, should be deemed good service on the said defendant, by delivering to and leaving a true copy of the said order, so passed and entered, with the said Mr. Chester, and at the same time shewing him the said original order; and this deponent further saith, that he did at the same time personally serve the said Mr. Chester with a subpœna, issuing out of and under the seal of this honourable court, by delivering a label of the said subpœna, to the said Mr. Chester, and at the same time shewing him the body of the said subpœna, so under seal as aforesaid; by which said subpœna the said William Hale was commanded to appear in this honourable court, the 26th day of June instant, to hear judgment the 29th day of June aforesaid, at the suit of the above-named Thomas Whet-ham and others, the plaintiffs in this cause.

Giles Heysham.

Sworn at the public office, &c.

**Affidavit of a Defendant's Residence, to obtain
a Subpœna, returnable immediately.**

In Chancery.

Between Charles Pilgrim and others, Plaintiffs;

and

John Edwards, and Samuel Hare, Defendants;

Richard Oakley of Cheapside, London, maketh oath

and saith that the above-named defendants, John Edwards and Samuel Hare, live and reside at Hackney, in the county of Middlesex, which is within ten miles of the city of London. (a)

Richard Oakley. Sworn at the public office, &c.

Affidavit of the Service of a Subpœna.

In Chancery.

Between James Gordon and Others, Plaintiffs ;

and

George Allan, Thomas Becket, and Richard
Scruton, Defendants.

Daniel Stalker of Lincoln's-inn, maketh oath, that he did, on the 1st day of November instant, serve the above-named defendants with a subpœna, issuing out of and under the seal of this honourable court, by delivering to and leaving with the said defendants, George Allan and Thomas Becket respectively, a label of the said subpœna, and at the same time shewing them respectively the body of the said subpœna, so under seal as aforesaid, and by leaving with the wife of the said other defendant, Richard Scruton, at his house in Cheapside, the body of the said subpœna, so under seal as aforesaid, by which said subpœna, the said defendants were directed to appear in this honourable court on the 6th day of November instant at the suit of the plaintiffs in this cause, as appeared to this deponent by the labels of the said subpœna.—Or in the following form :

That this deponent did, on the 28th day of October last, serve the said defendant, George Allan, and on the

AFFIDAVITS.

3d day of November instant, serve the said Thomas Becket, and on the 4th day of November instant, serve the said defendant, Richard Scruton, with a subpœna issuing out of and under the seal of this honourable court, whereby the said defendants were directed to appear in this honourable court on the 6th day of November instant, at the suit of the plaintiffs in this cause (as appeared to this deponent by the labels of the said subpœna) by delivering to, and leaving with the said defendant, George Allan, and Thomas Becket respectively, a label of the said subpœna, so under seal as aforesaid, and by leaving at the house (or lodgings) of the said defendant, Richard Scruton, with a woman servant of the said Richard Scruton the body of the said subpœna, so under seal as aforesaid, or by leaving with a person who informed this deponent he was the son (or man servant) of the said defendant, the body of the said subpœna, so under seal as aforesaid.

Daniel Stalker.

Sworn at the public office, &c.

At his lodgings, "by leaving with a person at the lodgings of the said defendant George Allan in Cheapside, London, who informed this deponent he was the master of the said house," or a servant or otherwise, as the fact may be.

Affidavit of a Party to ground an Application to be admitted to sue or defend a Suit, in *Forma Pauperis*. (a)

In Chancery.

Between Slingsby Baynes, Plaintiff;
and
William Baynes, Defendant.

Slingsby Baynes of Lincoln's-inn, the complainant, (or William Baynes of Cheapside, London, the defendant,) maketh oath, that he is not worth the sum of five pounds in all the world, his just debts being first paid, and his wearing apparel, and the matters in question in this cause, only excepted.

Slingsby Baynes. Sworn at the public office, &c.

An affidavit that the defendant is not worth more than five pounds, except the matters in question, will not entitle him to defend in *forma pauperis*; where it was shewn to the court, that the pauper *was in possession of the land in question*, the court ordered him upon motion to be dispaupered. (b)

(a) See the form of a petition for either a plaintiff or defendant to be admitted to sue or defend in *forma pauperis*, under the head Petition.

(b) 11 Ves. 49.

Affidavit to be made by a Complainant in a Bill of Interpleader, to be annexed to the Bill on filing the same.

In Chancery.

Between William Hands, Plaintiff;

and

William Dacie, and John Dacie, Defendants.

William Hands, the complainant above-named, maketh oath and saith, that this bill is not filed in collusion with either of the defendants in the said bill named, but merely of his own accord, to avoid being sued or molested touching the matters contained in the said bill.

William Hands.

Sworn at the public office.

Affidavit of the due Execution of Deeds, pursuant to an Order for that Purpose.

In Chancery.

Between John Radcliffe, esq. and others, Plaintiffs;

and

John Farnaby, esq. John Lee, esq. and others,
Defendants.

William Ryder of Lincoln's-inn, in the county of Middlesex, gentleman, maketh oath and saith, that the above-named defendant, John Farnaby, and also John Lee of Queen's-square, in the county of Middlesex, esq. did each of them, in the presence of this deponent, and of Richard Arnold of Chancery-lane, in the said county, gentleman, duly sign, seal, and, as their several acts and deeds, execute and deliver certain indentures of lease and release, bearing date respectively the 9th and

10th days of June, 1809, being a conveyance settled and approved by John Ord, esq. the master to whom this cause stands referred, of certain premises, situate in the parish of Hitchin in the county of Hertford, mentioned in the decree or decretal order made in this cause, on the 10th day of February, 1808; and this deponent further saith, that John Barron of Gosmore, in the county of Hertford, esq. did also in the presence of this deponent, and the said Richard Arnold, duly sign, seal, and as his act and deed, deliver the said indenture of release; and that the names William Ryder and Richard Arnold indorsed upon the said indenture of lease as witnesses, attesting the execution thereof by the said John Farnaby, and John Lee, and on the said indenture of release as witnesses, attesting the execution thereof by the said John Farnaby, John Lee, and John Barron, are of the proper hands-writing of this deponent and the said Richard Arnold respectively.

W. Ryder.

Sworn at the public office, &c.

Affidavit of a Receiver, on passing his Accounts before the Master.

In Chancery.

Between Gervaise Johnes and others, Plaintiffs;

and

Rose Beckford and others, Defendants.

Richard Higby of Marlborough, in the county of Wilts, gentleman, the receiver of the rents and profits of the estates in question in this cause, maketh oath, that the foregoing account set forth in the 13th, 14th, and 15th pages of this book, doth contain (according to the

best of this deponent's knowledge and belief) a full and true account of all the rents and profits of the said estates for one year, ending at Michaelmas, 1815, being from the foot of his former account, and of the former rents returned by his said former account to be in arrear and unreceived at the time of making up the same, which have been received by this deponent, or any other person by his order or for his use, except such as may have been received at the time of making up his account for the said year, ending at Michaelmas, 1815, which are or will be brought into his subsequent account; and this deponent further saith, that the several sums of money mentioned in the said foregoing account (in the 16th and 17th pages of this book) to have been paid or allowed, were actually paid or allowed by this deponent for or on account of the said estates, and for the several purposes in the 16th and 17th pages mentioned, according to the best of his knowledge and belief; and this deponent further saith, that he doth not know of any error or omission in the said foregoing accounts to the prejudice of any of the parties in the said cause.

Richard Higby.

Sworn at the public office, &c.

Affidavit in support of a Petition or Motion to enlarge Publication, where Publication is passed.

In Chancery.

Between William Windale and others, Plaintiffs;
and

Charles Brand,

Defendant.

Charles Brand of Staple's-Inn, London, the above-named defendant in this cause, Thomas Johnson, of Lawton, in the county of Chester, his solicitor, and

Maurice Robinson his clerk in court in this cause, severally make oath and say, and first this deponent, Charles Brand, for himself saith, that the depositions taken in this cause have not been seen, read, or heard read by this deponent, nor hath this deponent been informed or acquainted with the purport or contents of the said depositions, nor will this deponent be informed thereof, until publication shall be enlarged, and pass, by the order of this honourable court, in case such order can be obtained; and this deponent, Charles Brand, further saith, that he hath several material witnesses to examine, and particularly John Bromly, John Ives, and William Watton of the city of Worcester, as he is informed by his said solicitor, and verily believes; and these deponents, Thomas Tymes and Maurice Robinson, for themselves severally make oath and say, that they, or either of them, to the knowledge or belief of the other, have not seen, read, or heard read the said depositions, or been informed of the contents thereof, nor will these deponents or either of them, be informed of the contents thereof, until publication shall be enlarged and passed by the order of this honourable court, in case such order can be obtained.

Charles Brand.

Sworn at the public office, &c.

Thomas Tymes.

Maurice Robinson.

Affidavit of Service of Order Nisi for confirming Report.

In Chancery.

Between William Lee, Plaintiff;

and

Thomas Proctor, and Joseph Darton,
Defendants.

Thomas Halstead, clerk to John Williams, of Canterbury, gentleman, solicitor for the plaintiffs in this cause,

maketh oath that he did on the 3d day of this instant May, personally serve the above-named defendant Thomas Proctor, and that he did on the 4th day of this instant May, personally serve the above-named defendant Joseph Darton each with a true copy of an order made in this cause, dated the 1st day of May instant; whereby it was ordered, that a report made in this cause by Mr. Alexander, one of the masters of this court, dated the 27th day of April last, and all the matters therein contained, should stand ratified and confirmed by the order, authority and decree of this court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the defendants, having notice thereof, should within eight days after such notice shew unto this court good cause to the contrary. And this defendant at the time of such service, shewed to each of the said defendants the said original order, duly passed and entered."

Thomas Halstead.

Sworn at the public office, &c.

If by the terms of the order the clerks in court are to be served, the above form must be varied according to the fact, as follows:

maketh oath, that he did, on the 3d day of May instant, serve Mr. Douce, Mr. Lally, and Mr. Woodcock, who are the clerks in court for the plaintiffs, (naming them and all the defendants in this cause), with an order, &c. (as above) by delivering to, and leaving with the respective clerks of agents of the said Mr. Douce, Mr. Lally, and Mr Woodcock, a true copy of the said order at their respective seats in the six clerks' office, and at the same time shewing them respectively the said original order duly passed and entered. •

Affidavit that the Plaintiff hath not the Deeds inquired after, to annex to a Bill of Discovery, before it is filed,

In Chancery.

**Between Thomas Pinnock, Plaintiff;
and**

William Bogdani, Defendant.

Thomas Pinnock, the plaintiff in this cause, maketh oath and saith, that he, this deponent, hath not, nor to the best of his knowledge, remembrance, or belief, ever had all or any of the deeds, evidences, and writings, relating to the estate in question in this cause, and which are mentioned in this deponent's bill, exhibited in this honourable court against the said defendant; nor doth this deponent know where the said deeds, evidences, and writings, or any of them, now are, unless they are in the custody or power of the said defendant.

Thomas Pinnock.

Sworn, &c.

Affidavit that the Plaintiff had Writings, but hath lost them, to be annexed to a Bill of Discovery.

In Chancery.

**Between Samuel Wegg, esq. Plaintiff;
and**

Daniel M'Namara, Defendant.

Samuel Wegg, the plaintiff above-named, maketh oath and saith, that some time since, to wit, the fourth day of November last, the several writings now sought for in this cause, were in his, this deponent's, custody and

possession; but since the said time, this deponent hath lost them. And this deponent further saith, that he doth not know where the said writings are, unless they are in the hands or custody of the said defendants, or one of them; and that the said writings were lately, or now are, in the custody of the said defendant, Daniel M'Namara, as this deponent is informed and verily believes.

Samuel Wegg.

Sworn, &c.

Affidavit of Service of Subpœna to obtain an Injunction to stay Proceedings at Law.

In Chancery.

Between Robert Heysham, Plaintiff;

and

John Thornton, and Richard Chase,
Defendants.

—Samuel Sly, of &c. maketh oath, and saith that he this deponent did, on the 10th day of November instant deliver to, and leave with the clerk of Mr. William Wilshere, at his house in Fenchurch-street, London, the label of a subpœna issuing out of, and under the seal of this honourable court, at the suit of the above-named plaintiff, and which said Mr. Wilshere, (as this deponent hath been informed and believes) is the person employed by the defendant, John Thornton, in managing and transacting his business and concerns, as his attorney and solicitor, and is now proceeding against the plaintiff in the court of King's Bench, on a note given by him to the said defendant John Thornton, in the name of the other defendant Richard Chase, against which the plaintiff is now seeking relief in this honourable court. And this deponent further saith, that on the day he, this deponent, left the body of the said subpœna, under seal, as aforesaid, for the defendant, John Thornton, at his late dwelling-house, and

place of residence, in Cheapside, London, with a woman servant, who then said she lived in the said house, ~~he~~, this deponent acquainted her with the contents thereof, by which subpoena the defendants, John Thornton and Richard Chase were ~~to appear~~ in this honourable court, at the suit of the above-named plaintiff, immediately after the receipt thereof.

Samuel Sly.

Sworn, &c.

Affidavit of Service of Subpœna from Defendant's own Confession.

In Chancery.

Between William Hampson, Plaintiff;

and

William Prior, Defendant.

William Hampson, the complainant above named, maketh oath and saith, that on the 20th day of March last, at the sign of the George, at Luton in the county of Bedford, he heard William Prior the defendant in this cause, admit and acknowledge, to Mr. Wilbraham, in this deponent's presence, that he, the said defendant had been served with a subpoena, issuing out of, and under the seal of this honourable court, returnable the 12th day of February last, at the suit of this deponent.

William Hampson.

Sworn, &c.

~~A~~ffidavit of the Complainant, that he saw a Person serve the Defendant with a Subpœna, at his Suit.

In Chancery.

Between Joseph Dusseaux, esq. Plaintiff;
and
Samuel Shepherd, Defendant.

Joseph Dusseaux, of &c. the complainant above-named, maketh oath and saith, that on *the 7th day of January last*, he saw *James Rice, of &c.* serve the defendant Samuel Shepherd with a writ of subpœna, issuing out of, and under the seal of this honourable court, whereby the said defendant was required to appear in this court, on the 24th day of the said month of January, at the suit of this deponent. And this deponent saith, that since the service thereof, he hath diligently inquired after, and searched at the lodgings, where the said James Rice lived, for the said James Rice, in order that he might prove the service of the said subpœna; but this deponent hath not been able to obtain any intelligence of the said James Rice; and this deponent believes he is either dead or absconds, so that he cannot be found.

Joseph Dusseaux.

Sworn, &c.

Affidavit of Service of Subpœna for Costs, and Refusal to pay the same to ground Process.

In Chancery.

Between George Stovin, Plaintiff;
and
William Barber, Defendant.

William Windale, of &c. maketh oath and saith, th

he this deponent did, on the 20th day of June last, personally serve the said defendant with a subpoena, issuing out of, and under the seal of this honourable court, by delivering to, and leaving with the said defendant, the body of the said subpoena, so under seal as aforesaid; by which said subpoena the said defendant was required to pay unto the said plaintiff, or bearer, the sum of 5l. as appeared to this deponent by the label of the said subpoena. And this deponent did at the same time demand of the said defendant, the said sum of 5l. but the said defendant then refused to pay the same, or any part thereof, to this deponent; nor hath the said defendant since paid the same, or any part thereof, either to this deponent or to the plaintiff, as this deponent is informed, and verily believes.

William Windale.

Sworn, &c.

Affidavit of a Witness being old and infirm, upon a Petition to examine him *de bene esse*, before Issue joined.

In Chancery.

Between Meadows Taylor and others, Plaintiffs;
and

John Wooleston and others, Defendants.

Charles Baynes, esquire, of Stow-market, in the county of Suffolk, attorney at law, maketh oath and saith, that John Marriott, of the same place, esquire, grocer and tea-man, is a very material witness on his behalf in this cause, and without whose evidence this deponent, as he is advised, and verily believes, cannot safely proceed to a hearing in this cause, and that the said John Marriott is now of the age of seventy years, as he the said John Marriott informed this deponent. And this deponent

further saith, that the said John Marriott appears to be ~~very~~ weak and infirm, and in a declining way, and from his advanced years, in all probability not likely to live long.

Charles Baynes.

Sworn, &c.

Affidavit of Service of a Subpœna to testify.

In Chancery.

Between William Baynes, clerk, and others, Plaintiffs.
and

Henry Baynes, esq. and others, Defendants.

Bartholomew Carter, esquire, of, &c. maketh oath and saith, that he this deponent did, on the 20th day of January last, personally serve Henry Browne, esquire, with a subpœna issuing out of and under the seal of this honourable court, by delivering unto, and leaving with the said Henry Browne, the body of the said subpœna under seal, as aforesaid. And this deponent did, at the same time, give to the said Henry Browne, one guinea, by which said subpœna, the said Henry Browne was immediately to appear in this court, to testify for the plaintiff in this cause, as appeared to this deponent by the label of the said subpœna.

Bartholomew Carter.

Sworn. &c

**Affidavit to ground an Application to the Court,
for an Order for a Commission to examine
Witness abroad.**

In Chancery.

Between Francis Arnold, Plaintiff;

and

Simon Dove and James Cass, Defendants.

Simon Dove, esquire, the defendant above-named, maketh oath and saith, that this cause is now at issue, and this deponent is desirous of proceeding therein. And this deponent further saith, that he hath several witnesses to examine, who now live and reside in Boston, in New England, and at Quebec, in North America, as this deponent hath been informed, and believes, particularly Ebenezer Rittenhouse, John Hancock, and John Adams, who can prove, &c. and are likewise subscribing witnesses to certain deeds and instruments in the pleadings in this cause mentioned; and this deponent further saith, that he is advised that the several witnesses above-named are material and necessary witnesses, and without whose testimony he cannot safely proceed to a hearing, but that with the testimony of those witnesses this deponent saith he is advised and believes he can make a good defence in this cause.

Simon Dove.

Sworn, &c.

**Affidavit of a Clerk in Court, in order to enlarge
Publication, the Commission being returned.**

In Chancery.

Between George Richards, Plaintiff;

and

Henry Jones, esquire, Defendant.

Edborough Woodcock, esq. of the six clerks' office, clerk

in court for the said defendants, maketh oath and saith, that the depositions taken in this cause, by virtue of a joint-commission issued for that purpose, out of and under the seal of this honourable court, are returned unto him this deponent, and the same remain unpublished and unopened; and this deponent saith, that he hath not seen, nor read, nor is he acquainted with the purport or contents of the depositions so taken; nor will this deponent be informed thereof until publication shall pass by the further order of this court, in case such order can be obtained.

Elborough Woodcock.

Sworn, &c.

The plaintiff or defendant, and his solicitor, must make the like affidavit with the clerk in court, where publication is actually passed, and witnesses examined, before any order can be obtained to enlarge publication.

An Affidavit of a Defendant, his Clerk in Court, and Solicitor, in order to enlarge Publication; the Commission being returned.

In Chancery.

Between John A'Gull,
and

Plaintiff;

John A'Gudgeon, Defendant.

The defendant John A'Gudgeon, of Diss, in the county of Norfolk, Samuel Sly, solicitor for the said defendant, and Francis Douce the defendant's clerk in court, in this cause, severally make oath and say: and first, the said defendant, John A'Gudgeon, for himself saith, that the depositions taken in this cause, by virtue of a commission issued for that purpose, out of, and under the seal of this honourable court, have not been seen, read, or heard read, by this deponent; nor hath this deponent

been informed, or made acquainted with the purport, or contents of the depositions so taken; nor will this deponent, until publication shall be further enlarged and passed, by the order of this court, in case such order can be obtained. And the said defendant further saith, that he hath several witnesses to examine, as he is informed and believes, to wit, the Rev. Samuel Pilgrim, of St. Paul's Walden, in the county of Hertford, clerk, Timothy Potten of Preston, in the county aforesaid, huntsman, and John Swaine, of the same place, blacksmith. And the said Samuel Sly and Francis Douce, for themselves, severally say, that the said depositions are returned, and now remain in the custody of this deponent Francis Douce, the said defendant's clerk in court, unopened and unpublished, as these deponents severally believe; and these deponents further say, that they, nor either of them, have not seen, read, or heard read, the said depositions, nor been informed of the contents thereof; nor will they, these deponents, or either of them, be informed of the contents thereof, until publication shall be further enlarged and passed by the order of this court, in case such order can be obtained.

John A'Gudgeon.

Samuel Sly.

Francis Douce.

All sworn, &c

Affidavit of a Solicitor in order to enlarge Publication, the Commission being returned.(a)

In Chancery.

Between Timothy Potten, Plaintiff;
and
Samuel Hare, Defendant.

William Hampson, gentleman, of Luton, in the county of Bedford, the solicitor for the defendant, maketh oath and saith, that he hath not seen, heard read, or been informed of, the purport or contents of any of the depositions taken in this cause, nor will he, this deponent, see, hear read, or be informed of the purport or contents of the said depositions, until the further order of this honourable court; in case such order can be obtained for the said defendant to examine witnesses.

Affidavit of Service of Subpœna to hear Judgment.

In Chancery.

Between Thomas Whetham, esq. Plaintiff;
and
John Charles Clarke, esq. and
Peter Delme, esq. Defendants.

William Willshire, gentleman, of Hitchin, in the county

(a) This affidavit is made where the clerk in court has made an affidavit as before; but then the plaintiff or defendant, at whose request publication is enlarged, must make the like affidavit; and if all three are in or near London, they usually join in one affidavit.

of Hertford, attorney for the plaintiff, maketh oath and saith, that he this deponent did, on the 28th day of December last, serve the defendant John Charles Clarke, with a subpœna, issuing out of, and under the seal of this honourable court, by delivering to, and leaving with the said defendant, a label of the said subpœna, and shewing to him the body of the said subpœna, under seal as aforesaid. And this deponent did, on the 29th day of December last, deliver to and leave with a maid-servant, at the house of the other defendant, Peter Delme, at Chelsea, in the county of Middlesex, the body of the said subpœna, under seal as aforesaid; and deponent acquainted her, that it was a subpœna for her master, the said defendant; by which said subpœna the said defendants, John Charles Clarke, and Peter Delme, were required to appear in this honourable court, the eighth day of February then next, to hear judgment the eleventh of the same month, at the suit of the complainant, as appeared to this deponent by the label of the said subpœna.

William Willshere.

Sworn, &c.

Affidavit of Defendant being served with Subpœna to hear Judgment, in order to dismiss the Bill with Costs, if the Plaintiff makes Default at the Hearing of the Cause.

In Chancery.

Between Samuel Moody, esq. Plaintiff;
and
Michael Darton, Defendant.

Michael Darton, the defendant above named, maketh oath and saith, that on the twenty-eighth day of January last, he was served with a subpœna, issuing out of, and

under the seal of this honourable court, whereby this deponent was required to appear in this honourable court, on the eighth day of February instant, to hear judgment the eleventh day of the same month at the suit of the above named complainant.

Michael Darton.

Sworn, &c.

Affidavit of Service of a Petition.

In Chancery.

Between Joseph Darton, Plaintiff;

and

Rose Beckford, Defendant.

Leonard Hampson, esq. of Luton, in the county of Bedford, maketh oath and saith, that he this deponent did, on the 24th day of July instant (*if upon the party himself, "personally serve" the party "with a true copy,"*) serve Mr. Chester with a petition in this cause, preferred to the right honourable the master of the Rolls, by the said defendant, with his honour's order thereon, bearing date the twenty-third of this instant July, whereby it was ordered, that the parties concerned should attend his honour on the matter of the said petition, the next day of petitions, of which notice was to be given forthwith, by delivering to, and leaving with the agent of the said Mr. Chester, at his seat in the six clerk's office, a true copy of the original petition, with his honour's order thereon, and shewing the said original petition at the time of such service; and which said Mr. Chester acts as clerk in court for the plaintiff, as this deponent is informed and believes.

Leonard Hampson.

Sworn, &c.

Affidavit of Service of an Injunction.

In Chancery.

Between Thelwall Salusbury, clerk, Plaintiff;
 and
 William Lytton, esq. Defendant.

Benjamin Rooke, esq. of Hertford, maketh oath and saith, that he this deponent, did on the fourteenth day of May last, personally serve the defendant in this cause, with a writ of injunction, issued out of, and under seal of this honourable court, bearing date the tenth day of May aforesaid, by delivering to and leaving with the said defendant, a true copy of the said writ, and shewing him the original writ, so under seal as aforesaid, whereby the said defendant was enjoined (*set forth the enjoining part of the injunction.*)

Benjamin Rooke.

Sworn, &c.

Affidavit of Service of Writ of Execution of a
 Decree for Payment of Money, &c. upon the
 Parties in the Cause; and of a Demand of the
 Money in pursuance of a Letter of Attorney.

In Chancery.

Between Sir Fitzwilliam Barrington, bart. Plaintiff.
 and
 William Maurice Bogdani, and
 Thomas Pinnock, clerk, Defendants.

Richard Highway, gentleman, of Clifford's-inn, London, solicitor for the plaintiff, maketh oath and saith, that

he this deponent did, on the twelfth day of May last, personally serve the defendant, William Maurice Bogdani, with a writ of execution of a decree made in this cause, bearing date the 20th day of April last, by delivering to and leaving with him at his rooms in King's College, Cambridge, a true copy of the said writ, and shewing him the original writ under seal as aforesaid. And this deponent did, on the fourteenth day of May aforesaid, personally serve the other defendant, Thomas Pinnock, with a writ of execution of the above-mentioned decree, made in this cause, by delivering to and leaving with him the said Thomas Pinnock, at his house, at St. Tibbs, near Hitchin, in the county of Hertford, a true copy of the said writ, and shewing him the original writ, under seal as aforesaid, by which decree and writ, the said defendants were ordered and decreed to pay unto the plaintiff, the sum of one thousand pounds, in the said decree and writ mentioned; and at the times of the service of the said writ, upon the said several defendants respectively, this deponent produced and shewed unto each of the said defendants, a letter of attorney, properly executed by the complainant, under his hand and seal, authorizing and empowering this deponent to ask, demand, and receive of and from each of the said defendants, respectively, the said sum of one thousand pounds; a copy of which said letter of attorney this deponent left with the said defendants respectively, of each of whom this deponent did, at the time of serving the said writ, respectively demand and require payment of the said sum of money. But neither of the said defendants did pay the same, or any part thereof, to this deponent, nor to the plaintiff; nor to any person or persons for his use, as this deponent is informed and believes.

Richard Highway.

Sworn, &c.

**Affidavit of Service of a Writ of Execution, upon
a Clerk in Court.**

In Chancery.

In Ireland.

Between Samuel Wegg, esq. and others, Plaintiffs,
and .

Richard, Lord Baron of Caher,
and others, Defendants.

John De Courcy, of Foster-place, Dublin, in the kingdom of Ireland, attorney at law, maketh oath and saith that he this deponent did, on the 10th day of June last, serve Mr. Fell with a writ of execution of a decree made in this cause, bearing date the fourteenth day of December last, by delivering to, and leaving with the agent of the said Mr. Fell, at his seat in the six clerks' office, a true copy of the said writ, and at the same time shewing him the original writ, under the seal of this honourable court, whereby the said defendant, Richard. Lord Baron of Caher, was ordered, &c. And which said Mr. Fell is the clerk in court for all the defendants in this cause.

John De Courcy.

Sworn, &c

AFFIDAVITS.

Affidavit where the Defendants live in different Counties remote from each other, to ground an Application for an Order, that Service of an Order to confirm a Report Nisi on the Clerk in Court, may be good Service. (a)

In Chancery.

Between Joseph Pedder,	Plaintiff:
and	
Richard Oakley, and	
Thomas Saunders,	
and others	Defendants

Richard Oakley, one of the defendants above-named, maketh oath and saith, that the plaintiff, and the said several defendants, live remote from each other, to wit, the plaintiff Joseph Pedder, lives at Preston, in the county of Hertford: the defendant, Thomas Izzard, lives in the city of Norwich: and the defendant Thomas Saunders lives in the city of Durham; and defendant Daniel Young, lives in the city of Exeter, as this deponent is informed and believes.

(a) If the defendants are six in number, the court will of course, upon a suggestion that the parties are many in number, make an order for service upon the clerk in court, post. 37.

**Affidavit of Service of an Order by a Quaker
upon two Clerks in Court.**

In Chancery.

Between Sir Charles Farnaby, bart. and
his Wife, Plaintiffs;
and
Newdigate Poyntz, esquire, Defendant.

Isaac Johnson, gentleman, of Baldock, in the county of Hertford, one of the people called quakers, maketh affirmation, and saith, that he this affirmant did on the 20th day of July last, serve Mr. Lally with an order made in this cause, bearing date the 14th day of July last, whereby it was ordered, that, &c. by delivering to, and leaving with the agent of the said Mr. Lally at his seat in the six clerks' office, a true copy of the said order, and shewing the original order passed, and entered, at the time of such service. And this affirmant did, on the same day, serve Mr. Croft with the said order, purporting as aforesaid, by delivering to and leaving with the said Mr. Croft personally, at his seat in the six clerks' office, a true copy of the said order, and shewing him the original order so passed and entered as aforesaid; and which said Mr. Lally, and Mr. Croft, are clerks in court for the above-named defendants respectively.

Isaac Johnson.

Sworn, &c.

Affidavit of the Service of an Order Nisi, to make same Absolute.

In Chancery.

Between	Rose Beckford, 'esq.	Plaintiff;
	and	
	Timothy Potter, esq.	
	and others,	Defendants.

Richard Arnold, esquire, of, &c. solicitor for the plaintiff, maketh oath and saith, that he did on the 20th day of November instant, personally serve Mr. Wainwright with an order of this honourable court, made in this cause the 17th day of November instant, whereby it is ordered, that the report made by Mr. Simeon, one of the masters of this honourable court, bearing date the 30th day of October last, by which report, Mr. William Willshire, on behalf of the said Timothy Potten, is reported the best purchaser of the premises therein mentioned, at the sum of two hundred pounds: and all the matters and things therein contained, do stand ratified and confirmed, by the order, authority and decree of this court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof; unless the parties concerned, who are many in number, and live remote from each other, their respective clerks in court having notice thereof, should, within eight days after such notice, shew unto this court good cause to the contrary, by delivering to, and leaving with the said Mr. Wainwright, a true copy of the said order, and at the same time shewing him the original order, passed and entered, and this deponent further saith, that he did afterwards, on the same day, serve Mr. Lally with the said order, by delivering to, and leaving with his copy-

ing clerk, at his seat in the six clerks' office, a true copy of the said order, and at the same time shewing him the original order passed and entered; which said Mr. Wainwright and Mr. Lally, are all the clerks in court for the plaintiffs and defendants in this cause, as this deponent is informed and believes. And this deponent further saith, that he did, on the same day, personally serve Richard Oakley, esq. who, by a former report, had been reported the purchaser of the said premises with the before-mentioned order; by delivering to, and leaving with the said Richard Oakley, a true copy thereof, and at the same time shewing him the said original order, passed and entered.(a)

Richard Arnold.

Sworn, &c.

Affidavit of Service of a Subpœna to name a Clerk in Court.

In Chancery.

Between Timothy Bristow, Plaintiff;
and
Anthony Rhudde, Defendant.

Slingsby Baynes, of &c. maketh oath and saith, that he, this deponent, did serve the defendant with a sub-

(a) An order *nisi* requires personal service, except where the court, by order, directs, that service upon the clerk in court, and in some cases upon the party's solicitor, shall be good service. If the parties live very remote from each other, upon affidavit of that fact, the court will make such an order; and if the parties are six in number, upon suggesting that fact only, if it be true, the order, as of course directs service upon the clerk in court. Et vide Vol. I. 231.

poena, issuing out of, and under the seal of this honourable court, by delivering to, and leaving with him, personally, the body of the said subpoena, so under seal as aforesaid, whereby the said defendant was required to appear in this honourable court, the 14th day of May instant, to name an attorney at the plaintiff's suit. (a)

Slingsby Baynes.

Sworn, &c.

Affidavit to enlarge the Time for shewing Cause upon a Rule of Court.

The King, on the Prosecution of Samuel Wegg, esq.

v.

Henry A. Beiderman and others.

William Hands, of Gray's Inn, gentleman, maketh oath and saith, that on Tuesday next after one month of Easter in this present term, upon reading the affidavit

(a) If the party's clerk in court be dead, no process can be taken out against the party, until he has appointed a new clerk in court, and a *subpoena ad faciendum attornatum* must be taken out for that purpose, because till then the party is not in court. The service of this subpoena will be good, if the body under seal be left at the house, though the party may deny himself. 1 Wms. 420. And the usual process, by attachment, &c. may be issued to compel obedience to the writ. This happens when a defendant's clerk in court dies before a decree; but if a plaintiff's clerk in court dies before a decree, the defendant need not serve the plaintiff with this subpoena, because the plaintiff must keep the cause moving, and the defendant can give him notice to dismiss, for want of prosecution, if three terms are suffered to elapse, and no proceedings are had. After a decree to proceed before the master, if the plaintiff or defendant's clerk in court die, a subpoena must be taken out *ad faciendum attornatum*.

of this deponent, it was ordered that Saturday next, after the morrow of the ascension of our Lord, be given to Henry A. Beiderman, gent. George Maxwell, gent. and John Davies, to shew cause why a writ of mandamus should not issue directed to them, commanding them to make and publish their final award of the several allotments made in pursuance of the powers and authorities vested in them under and by virtue of an act of parliament made and passed in the 37th year of his present Majesty's reign, for dividing and inclosing certain open and common fields, commons, pastures, and other commonable lands and waste grounds in the parish of King's Walden, in the county of Hertford, upon notice of the said rule to be given to them; and also to Mr. William Willshere, in the said affidavit named in the mean time. And this deponent saith that on Saturday, the 22d of this instant May, Mr. Dacie, attorney for the said Samuel Wegg, caused the said rule to be sent down by the post to an attorney at Peterboro' to be served on the said George Maxwell, who resides at Flitton in the neighbourhood of Peterboro', and on Monday the 24th this deponent received advice by letter stating that the said George Maxwell was from home, and was not expected for a week or ten days, but that the said George Maxwell might be heard of at Furnival's Inn coffee-house in London; and deponent, as also the said Mr. Dacie in the course of last week called several times at the said Furnival's-Inn coffee-house, and was there informed that the said George Maxwell was not there; and deponent hath used his utmost endeavour to find out the said George Maxwell, but hath not been able to meet with him to serve the said rule.

Sworn, &c.

W. Hands,

“ Knutsford, 20th May, 1796.”

“ William, son of Thomas and Mary Delves, of
“ this parish, baptized.”

Between William Delves, **Plaintiff ;**
and
Daniel Dutton, and
others, **Defendants.**

Stephen Leake, of the city of Chester, gentleman, maketh oath and saith, that the above is a true copy of an entry, made in the book kept by the vicar of the parish of Knutsford, in the county of Chester, for registering baptisms in the said parish, so far as relates to the baptism of the said William Delves, and that he, this deponent, carefully examined and compared the same with the said book ; and this deponent further saith, that William Delves therein named, is the plaintiff referred to by this affidavit, and in the pleadings in this cause named.

Stephen Leake.

Sworn, &c.

The copy of the above entry, should be written upon a half-crown affidavit stamp, and it will save 2s. 6d. as an exhibit, if written on a separate paper, and annexed.

Or thus :

_____ maketh oath and saith, that the paper writing, now produced and shewn to this deponent at the

An examined copy of the register of a marriage in the Swedish ambassador's chapel at Paris is not evidence; (a) nor is a copy of a register of baptism in the island of Guernsey sufficient here of a party being of age. (b) The copy of the parish register by the late act is evidence. (c)

(a) 1 Esp. 353.

(b) 1 Cox's Rep. 275.

(c) 18 Ves. 198.

time of swearing this affidavit, and hereunto annexed, marked (A.) is a true copy of an entry made in the book kept by the minister of the parish of Knutsford, in the county aforesaid, for registering baptisms in the said parish so far as relates to the baptism of the said William Delves, this deponent having carefully examined and compared the same therewith, &c. (*as before.*)

The copy is annexed and forms the exhibit. But the usual way is to ingross it upon an affidavit stamp.

A certificate signed by the curate or officiating minister of the parish, is useless, he having no authority to give such a certificate: country attornies often fall into this error.

Affidavit verifying a Public Record of the Death and Identity of a Party in a Cause.

“ Committed sixth day of March, one thousand
 “ eight hundred and five, Robert Powel, alias
 “ Harvey—forty-five years old—five feet six
 “ inches—dark complexion—born at Burslem in
 “ Staffordshire—married man—three children—
 “ dark hair—bald head—grey eyes—baker—
 “ committed by F. F. Foljambe, esq.—house-
 “ breaking in the day-time—tried the fifteenth
 “ day of March, one thousand eight hundred and
 “ five, by Sir Allan Chambre—executed the tenth
 “ day of April one thousand eight hundred and
 “ five.”

In Chancery.

Between John Lawrence, Plaintiff;
 and
 George Wilson, and others,
 Defendants.

George Vernon, of &c. maketh oath and saith that the above is a true copy of an entry made in the book

kept by the keeper of the county gaol of Nottingham, for registering the commitments, and executions of felons in the said county, so far as relates to the commitment, and execution of the said Robert Powel, alias Harvey. And that he this deponent carefully examined and compared the same with the said book. And this deponent further saith that Robert Powel, alias Harvey, therein named, was co-assignee with James Bakewell, esq. of the estate and effects of the defendant William Lawrence in the pleadings in this cause named, and that the said Robert Powel, alias Harvey, was one of the sons of John Harvey, late of Stafford, tanner, deceased, and that he lived, and resided at Gayton near Stone, in the county of Stafford.

George Vernon.

Sworn, &c.

Affidavit upon leaving Deeds, Papers, and Writings, at a Master's Office, pursuant to a Decree or Order.

In Chancery.

Between Thomas Carr, Plaintiff;
and

William Windale, Defendant.

William Windale, the defendant above-named, maketh oath and saith, that neither he, this deponent, nor any person or persons for his use, to his knowledge, or belief, nor with his privity or consent, have, or hath, nor ever had, in his or their custody or power, any deeds, papers, or writings, or books of account relating to the matters in question in this cause, save and except the several deeds, books of account, papers, and writings, mentioned and contained in the schedule herunto annexed.

William Windale.

Sworn, &c.

Affidavit of a Mortgagee's attending to receive his Money, pursuant to the Master's Report.

In Chancery.

Between George Richards, esquire, Plaintiff;
and

John Burford, esquire, Defendant,

George Richards, the plaintiff above-named, maketh oath and saith, that he, this deponent, in pursuance of the report of Francis Paul Stratford, esq. one of the masters of this honourable court, bearing date the fourteenth day of April last, did personally attend and wait at the chapel of the Rolls, in Chancery-lane, at and from the hour of ten of the clock in the forenoon, until the hour of twelve of the clock at noon (the time and place mentioned in the report) of the same day, in order to receive from the defendant in this cause, the sum of five hundred and sixty-eight pounds, twelve shillings, and four-pence, by the said report due, and directed to be paid to this deponent for principal, interest and costs for the mortgage in question in this cause, when and where the said defendant (or defendants, if more than one, any or either of them) or any person or persons on his or their (or any or either of their) account or accounts, or behalf, did not attend or pay to this deponent, the said sum of five hundred and sixty-eight pounds, twelve shillings, and four-pence, or any part thereof; but this deponent saith, that the said sum now remains wholly due and unpaid.

George Richards.

Sworn, &c.

**Affidavit in Support of Charge, and Proposal for
Maintenance, &c. of Infants before the Master.**

Between Sarah Palmer, and Mary Palmer,
infants, by Thomas
Weston, their next friend, Plaintiffs;
• and •
Sarah Palmer, widow, Defendant.

The defendant, Sarah Palmer, maketh oath and saith, that ever since the death of her late husband, she hath maintained and provided the complainants, her children, with meat, drink, washing and all other necessities; and this deponent hath also been at the costs and charges of inoculating her children for the small-pox. And this deponent saith, that according to the best of her judgment and belief, and as she computes the same, that one year with another, the charges and expences this deponent hath been put unto, for and on account of her said children, have exceeded the sum of 40l. which this deponent was allowed for the maintenance and education of her said children. And this deponent further saith, that her said children being of the ages following; viz. the plaintiff, Sarah Palmer, about the age of 10 years; and the plaintiff, Mary Palmer, about the age of 8 years, she hath removed from her house at Swansea, to the town of Cardiff, in order the better to educate her said children; and hath also provided for her said children a woman servant, to attend them; and this deponent saith, that she verily believes that she cannot provide for, maintain, and educate her said children as she wishes and intends, without being allowed for each of her said children the annual sum of 30l. this deponent intending that her said children shall be instructed in writing, dancing and other accomplishments.

Affidavit in Support of a State of Facts, and Proposal for Guardian, and Maintenance of Infants.

In Chancery.

Between John Green, Sarah Green,
and Thomas Green, infants,
by William Martin, their
next friend, -

Plaintiffs;

and

Michael Windale, esq. executor of Michael Holroyd,
esq. deceased, -

Defendants.

Thomas Green, esq. of &c. father to the above-named John Green, Sarah Green, Thomas Green, Sarah Gregory, of &c. widow, and William Martin, Esq. of &c. severally make oath and say; and first this deponent, Thomas Green, for himself saith, that Michael Holroyd, the testator in the pleadings named, in and by his last will and testament, in writing, gave and bequeathed unto the defendant, Michael Windale, the sum of 1000l. upon trust; as to 500l. part thereof, to place that sum out at interest during the life of Maria Green, the plaintiff's mother, since deceased, late the wife of this deponent Thomas Green, and directed that the interest and proceeds thereof, should be paid and applied for the use of all the children of this deponent by the said Maria Green, who should be living at the time of her decease. And the said testator did also, in and by his said will, give and bequeath to the defendant Michael Windale, in trust for the plaintiffs, John Green, Sarah Green, and Thomas Green, as tenants in common, a leasehold messuage, in Islington, of the nett yearly rent of 13l. 10s. And this deponent saith, that the said testator died in or about the said month of February, in the year 1805; and the

said Maria Green, this deponent's late wife, departed this life on or about the 1st day of November, 1807, leaving the plaintiffs, John Green, Sarah Green, and Thomas Green, her only children, her surviving, and no other issue. And this deponent saith, that the plaintiff, John Green, was born the 24th day of February, in the year 1802; the plaintiff, Sarah Green, was born the 26th day of April, in the year 1804; and the plaintiff, Thomas Green, was born the 16th day of January, in the year 1806; and this deponent saith, that the plaintiffs' relations are, this deponent Thomas Green, their father, their aunts, Jane Rice, Sophia House, and Elizabeth Martin, the wife of the other deponent William Martin, Elizabeth Eccles, their paternal grandmother, the other deponent, Sarah Gregory, their maternal grandmother, and no other near relations. And this deponent further saith, that for some months after the death of the said Maria Green, the plaintiff's mother, this deponent maintained and clothed the plaintiffs, his children; but afterwards this deponent falling into distress, and being greatly embarrassed in his circumstances, and unable to maintain and educate the plaintiffs, this deponent sent them to the other deponent, Sarah Gregory, and she hath maintained and educated the plaintiffs, John Green, and Sarah Green, as hereinafter mentioned; and this deponent saith, that he being as yet unable to maintain and educate the plaintiffs, John Green, and Sarah Green, they remain with the said Sarah Gregory; and the plaintiff, Thomas Green, is now placed with the other deponent, William Martin, as this deponent hath been informed and believes. And this deponent further saith, that the whole of the property to which the plaintiffs, John Green, Sarah Green, and Thomas Green, are entitled under the testator, Michael Holroyd's will, consist of the said legacy of 500*l.* which, in pursuance of an order, made in this cause, dated the 18th day of April, in the year 1809, has been paid into the bank,

in, the name and with the privity of the accountant general of this court, and laid out and invested in the purchase of 781*l.* 5*s.* bank 3 per cent. consolidated annuities, where the same now remains ; and the said leasehold messuage or tenement, at Islington aforesaid, now let at the clear yearly rent of 13*l.* 10*s.* which rent, together with the dividends, interest, and proceeds, arising from the said 781*l.* 5*s.* produce a clear annual sum of 36*l.* 18*s.* or thereabouts. And this deponent, Sarah Gregory for herself saith, that she is the maternal grandmother of the plaintiff, and that she hath at her own expence, maintained, clothed, and educated the plaintiff, John Green, from the 5th day of July, in the year 1809, until the present time; and she continues so to do; and that she hath necessarily paid, expended, and laid out in boarding, clothing, and other contingent expences, and also in educating the said John Green, the gross sum of 64*l.* 9*s.* 4*d.* and upwards: and that she hath maintained and educated the plaintiff, Sarah Green, from the 5th of July, in the year 1808, to this time; and that she hath necessarily expended and laid out in boarding, clothing, and other expences, and in educating the said Sarah Green, the gross sum of 33*l.* and upwards. And this deponent maintained and educated the plaintiff, Thomas Green, from the 20th day of July, in the year 1809, until the month of April, in the year 1810, when the said Thomas Green was taken by the other deponent, William Martin; and that she hath necessarily expended, and laid out in boarding, clothing, and other incidental expences, and in educating him, the gross sum of 12*l.* 10*s.* And this deponent further saith, that the plaintiffs, John Green, and Sarah Green, are now maintained and educated by this deponent Sarah Gregory. And this deponent, William Martin, for himself saith, that the other deponent, Sarah Gregory, declining to maintain and educate the plaintiff, Thomas Green, this deponent took the said Thomas Green; and this deponent hath maintained,

educated, and clothed the plaintiff, Thomas Green, from the month of April, in the year 1810, to the present time. And that he hath paid, laid out, and expended, in the necessary expences for maintenance, clothing and education, the gross sum of 25*l.* and upwards; and the said Thomas Green is now maintained and educated by this deponent, William Martin.

Thomas Green.

Sarah Gregory.

Sworn, &c.

William Martin.

Affidavit in Support of Petition to vary Minutes of an Order made for Trial of an Issue at the Assizes, by directing the Issue to be tried in London.

In Chancery.

Between Thomas Harris and others, Plaintiffs;
and

Francis Dorset and others, Defendants.

Thomas Harris, of the city of Bristol, esquire, one of the complainants, on behalf of himself and the other complainants above named, maketh oath that the above cause came on to be heard in this honourable court in Trinity term last, when an issue at law was directed by this honourable court to be tried at the next Lent assizes to be holden for the county of Monmouth, *whether the defendant Richard Bailey was a partner with the defendant Nathaniel Webb, deceased, in the pleadings of this cause mentioned, and Francis Dorset, on the nineteenth day of March one thousand seven hundred and sixty-five*, as this deponent hath been informed and believes. And this deponent

saith that he apprehends and humbly conceives and submits the same to the judgment of this honourable court, that the said issue is more proper to be tried before a jury of merchants in the city of London, as being persons in trade, and conversant therewith, and well acquainted with the nature of partnerships therein, than by a jury in the county of Monmouth, they being persons residing in the country, out of and unconnected and unacquainted with trade and partnerships therein. And further saith that the subject matter of the above cause and of the said issue at law directed to be tried therein as aforesaid did not arise in the said county of Monmouth; and saith that he apprehends and believes that the witnesses which will be produced by him this deponent and the said other complainants and the said defendant Richard Bayley at the trial of the said issue at law reside at a great distance from the town of Monmouth.

Thomas Harris.

Sworn, &c.

Affidavit in Support of a Motion, or Petition, for a Writ of *Ne Exeat Regno*. (a)

In Chancery.

Between William Clymer, and others, Plaintiffs;
and

Thomas Strode, - Defendant.

William Clymer, of &c. merchant, one of the complainants in this cause, maketh oath and saith, that he this deponent, and the other complainants, Thomas Young, Edward Dalton, William Wheeler, and Thomas Pierson, together with the defendant, Thomas Strode, being owners of a vessel called *Cape Mount*, agreed to fit her out for a voyage from Liverpool to Africa and

(a) For the order, see Hand's Chanc. 5, 6, 7.

from thence to the island of Jamaica ; and from the said island of Jamaica, to return home to Liverpool, touching at Barbadoes ; and that the defendant, Thomas Strode, should be master of the said vessel for the said voyage. And deponent further saith, that accordingly the said defendant, in the month of April, one thousand seven hundred and ninety-nine, proceeded on the said voyage, in the said ship or vessel, and disposed of the said cargo on the coast of Africa, and therewith purchased negroes, gold dust, elephants' teeth, and other merchandize ; but that instead of proceeding to the island of Jamaica, according to his orders, the said defendant went unto the island of Antigua, and there sold and disposed of the whole cargo, and with the proceeds arising from such sales, bought other goods and merchandizes at Antigua aforesaid, and therewith purchased a sloop, and loaded the same, and the said vessel Cape Mount, and proceeded again to the coast of Africa, in the month of January, 1816 ; and on or about the 30th day of July following, he returned again to Antigua, with the said vessel Cape Mount, and a cargo of negroes, which the said defendant, Thomas Strode, likewise there disposed of, and hath not accounted for the same. And this deponent saith, that upon a fair and just account, to be made up, stated, and settled, between this deponent and the said other complainants, and the said defendant, as part owners of the said vessel, Cape Mount and cargo, and for monies had and received by the defendant for their use, for such goods and merchandizes, and the proceeds thereof, touching which, this deponent, and the said other complainants have filed their bill in this honourable court, he the said defendant, Thomas Strode, is now justly and truly indebted to this deponent, and the said other complainants, in the sum of two thousand pounds and upwards, of lawful British money, for which said debt, or sum of money, this deponent saith, that neither he, this deponent, or any of the said other complainants, have received any security or satisfaction.

And this deponent further saith, that the said Thomas Strode is soon going abroad to parts beyond the seas, as a passenger, and hath lately declared his intention of so doing, as well to this deponent as to other persons, and is gathering in his debts, and effects for that purpose; and this deponent verily believes, that in case the said defendant, Thomas Strode, goes beyond the seas, according to his intention, he will never return again; and deponent saith, that he this deponent, and the said other complainants will thereby be in very great danger of losing their said debt.(a)

William Clymer.

Sworn, &c.

**Affidavit to ground an Application for a Writ
of *Ne Exeat Regno*.(b)**

In Chancery.

Between John Wilmot, and others, Plaintiffs ;
 • and •
 Mary Jones, Defendant.

John Wilmot, of &c. one of the complainants in this cause, maketh oath and saith, that the defendant, Mary Jones, is indebted, as executrix of her late husband William Jones, late of Monmouth, deceased, to him this deponent, and his co-partners, Thomas Elliot and James Mallett in the sum of two hundred and twenty pounds, three shillings and two-pence, for goods sold and delivered. And this deponent further saith; that the said Mary Jones, as executrix as aforesaid, is justly and truly indebted unto him this deponent, and the other com-

(a) Upon motion, and reading this affidavit, and a certificate of the bill being filed, the writ of *ne exeat* was granted, marked for 1500l.

(b) For the order, see Hand's Chanc. 5, 6, 7.

plainant in the sum of one hundred and ninety pounds, ten shillings, and two pence, for money paid to, and for the use of the said Mary Jones, by her late husband, deceased. And the said deponent further saith, that the said Mary Jones has got in, and received, effects of her said late husband, to the amount of two thousand pounds, and upwards, as he this deponent hath been informed and believes; and that it is generally reported, and this deponent believes the same to be true, that the said Mary Jones hath taken her passage on board a merchant ship bound for Lisbon, and is going to live and reside in parts beyond the seas, to avoid payment of her debts, and the debts of her said late husband. And this deponent further saith, that he is advised, the said defendant being executrix of her said late husband, cannot be held to bail at law, and that he and his co-partners are remediless, unless by the process of this honourable court.

John Wilmot.

Sworn, &c.

An Affidavit to ground an Application for an Order(a) to examine Witnesses going abroad, and to take their Examination by an Interpreter.*

In Chancery.

Between James Lushman,

Plaintiff;

and

Jonah Thomas, and others, Defendants.

Jonah Thomas of the city of Bristol, maltster, one of the defendants in this cause, maketh oath and saith that Paradise Dwineh, and John Boulineard, two of the subjects of the French king, and who were late officers on board a ship or vessel called the Marquis de Conflans, lately belonging to the subjects of the French king, mentioned in the

(a) For the order, see Hand's Chanc. 94, 95.

plaintiff's bill of complaint; and some time ago taken by the Dreadnought private ship of war, belonging to the port of Bristol, also mentioned in the said bill, are material witnesses for him, this deponent, and the other defendants in this cause, without whose testimony they cannot safely proceed to a hearing of this cause, as deponent has been informed and believes. And saith, that he hath been informed and believes that they the said Paradise Dwinch and John Boulincard being at present prisoners of war in England, are likely to be speedily exchanged for English prisoners in France, and speedily expect to have leave to depart from England to France aforesaid, and intend speedily to go thither; and deponent saith that unless this deponent and the said other defendants in this cause can obtain and have authority to take their respective examinations before they so depart for France aforesaid, this deponent and the said other defendants cannot have the benefit of their testimony; and this deponent further saith that the said Paradise Dwinch and John Boulincard are not, nor is either of them acquainted with the English language sufficiently to be examined on interrogatories without the assistance of an interpreter.

Jonah Thomas.

Sworn, &c.

Affidavit of Waste being committed to ground an Injunction to stay Waste.

In Chancery.

Between Richard Arnold,
and

Plaintiff;

Rose Beckford, esq. and others, Defendants.

Richard Arnold, esquire, the complainant above-named, maketh oath and saith, that the defendant, Rose Beckford, in the months of June and July last, did pull

down and destroy part of the dwelling house and out-buildings, at Offley Holes in the parish of Hitchin, in the county of Hertford, of which this deponent is seized in fee-simple, as this deponent is advised and believes, and for the recovery whereof this deponent is proceeding in the court of King's Bench. And this deponent further saith, that the said Rose Beckford hath felled and cut down several timber and timber-like trees and saplings, not proper to be felled, growing in and upon the lands and grounds belonging to the said mansion house, and the grounds and premises, at Offley aforesaid, and hath carried away such trees, and sold the same to John Hill, esq. a carpenter at Whitewell, in the said county. And this deponent further saith, that the said Rose Beckford is now cutting down, and selling the trees and thriving timber standing and growing for ornament, shade and shelter, in and about the mansion house, and buildings aforesaid, and in vistas, avenues, walks, pleasure grounds, and plantations, belonging thereto; and this deponent saith that the said Rose Beckford threatens that he will cut down, carry away, and sell, all the timber, timber-like trees, ornamental and thriving timber, and saplings, standing and growing in and about the said estate and lands, at Offley aforesaid; and this deponent verily believes, that the said Rose Beckford will carry his threats into execution, unless restrained by this honourable court, to the great loss and damage of this deponent.

Richard Arnold.

Sworn, &c.

Affidavit in Support of a Creditor's Charge for Wages, secured by Bond and Judgment.

In Chancery.

Between William Robinson, and others, Plaintiffs.
and -

Henry Harrington, esq. and others, Defts.

Frances Sims, of &c. spinster, maketh oath, that Henry Harrington, esq. being justly and truly indebted to this deponent in the sum of 175l. for a long arrear of wages due from him to this deponent, for better securing the payment thereof, on or about the 28th day of March 1816, became bound unto this deponent, in a bond or obligation, in writing, in the penal sum of 350l. conditioned for the payment to this deponent of the said sum of 175l. with lawful interest for the same, on the 28th day of June then next following. And this deponent further saith, that as a further security for the payment of the said sum of 175l. and interest, the said Henry Harrington and John Harrington, his eldest son (lately deceased), did, as this deponent is informed, and verily believes (on or about the 29th day of August, in the said year) 1816, execute a warrant of attorney for confessing a judgment against them the said Henry and John Harrington, in his majesty's court of Common Pleas, at Westminster, for the sum of 350l. debt by *mutuatus*, besides costs of suit, as of Trinity term then last past, or any other subsequent term, or to that effect; but this deponent, for her greater certainty, refers herself to the said warrant of attorney. And this deponent further saith that pursuant to the said warrant of attorney, judgment was entered up at this deponent's suit, against the said Henry Harrington, and John Harrington, for the said 350l. debt, and 60s. costs, as of Trinity term, in the said year 1816, as this deponent is also informed and verily be-

believes, as by the record of the said judgment, and to which this deponent refers herself, may appear. And this deponent further saith, that, the said bond and warrant of attorney, were given for one and the same sum of money, and that the said judgment is still in force and unsatisfied, and that the said principal sum of 175l. is now justly due and owing to this deponent, on the said bond, and judgment, together with the interest for the same, after the rate of 5l. for the 100l. by the year, from the date of the said bond, and also the costs of the said judgment; and that she this deponent hath not received any security or satisfaction for the said principal sum of 175l. or the interest thereof, or any part thereof, or for the costs of the said judgment, save and except the said bond and warrant of attorney, and the judgment entered up thereupon as aforesaid.

Frances Sims.

Sworn, &c.

Affidavit in Support of a Bond Creditor's Charge before the Master, under an Advertisement for Creditors, pursuant to a Decree.

In Chancery.

Between Thomas Holroyd, esq. Plaintiff;
and

William Windale, esq. and others, Defts.

James Rice, esq. of &c. maketh oath and saith, that George Sells, esq. late of London, fishmonger, the testator in the pleadings in this cause named, was in his lifetime, and at the time of his death justly and truly indebted unto this deponent, in the sum of four hundred pounds, for goods sold and delivered, for securing the payment whereof, the said George Sells made and exe-

cuted a bond or obligation, in writing, bearing date the 14th day of January, in the year 1815, in the penal sum of 800l. conditioned for payment to this deponent, his executors, &c. of the sum of 400l. of lawful British money, with interest for the same, at the rate of 5l. per cent. per ann. on the 14th day of June then next ensuing, as by such bond, now in this deponent's custody, to which, for greater certainty as to the dates and material contents, this deponent refers. And this deponent doth admit, that the interest which hath accrued or become due upon the said bond hath been paid, remitted or otherwise satisfied, unto this deponent, up to the 14th day of June last; and which was so paid as this deponent hath been informed and believes, by the order and direction, or on the account of the plaintiff, Thomas Holroyd, the executor of the said George Sells, deceased. But this deponent saith, that the whole of the said principal money of 400l. together with the interest thereof, from the said 14th day of June last now remains due and owing, from the estate and effects of the said George Sells, unto this deponent; and for which this deponent hath the said bond, and no other security whatever.

James Rice.

Sworn, &c.

Affidavit in Support of a Judgment Creditor's Charge, verifying the Office Copy of the Judgment upon which the Charge is founded.

In Chancery.

Between John Barron, and others, Plaintiffs;
and

William Lax, and others,

Trustees, &c.

Defendants.

Richard Arnold, esq. of &c. maketh oath and saith,

that he this deponent did, on the 20th day of May instant carefully examine and compare the paper writing hereunto annexed (marked A.) purporting to be an office copy of a judgment, recovered in his majesty's court of Exchequer, at Westminster, in Hilary term, 1816, by the said John Barron, the plaintiff, against George Allen, esq. late of the city of Exeter, merchant, with the record thereof; and this deponent saith, that the said paper writing is a true copy of the judgment roll, in the before-mentioned suit, between the said John Barron and George Allen, now remaining on record, in full force and unsatisfied, in the said court of Exchequer, at the office of pleas, in Lincoln's-inn, in the county of Middlesex.

Richard Arnold.

Sworn, &c.

Affidavit to prove an Office Copy of a Judgment obtained by a Creditor in Support of a Charge before the Master.

In Chancery.

Between George Price Spiller, esq. and

others, Creditors, &c.

Plaintiffs;

and

Frederick Booth, esq. and

others,

Defendants.

Richard Arnold, esq., of &c. maketh oath and saith, that the paper writing hereunto annexed, (marked B.) purporting to be an office copy of a judgment, obtained by George Richards, esq. against Rose Beckford, esq. in his majesty's court of King's Bench, at Westminster, in Trinity term, 1808, for four hundred pounds debt, and sixty-three shillings damages, is a true copy of the record of the said judgment; and this deponent saith, that he

did on the tenth day of June instant, carefully examine and compare the said paper writing (marked B.) with the original record of the said judgment of which the same purports to be a copy in the treasury of the said court of King's Bench, with the assistance of one of the clerks or deputies there; and that the said paper writing is a true copy of the said record of the judgment before-mentioned; and that no satisfaction appears upon the said record to have been entered up thereon.

Richard Arnold.

Sworn, &c.

Affidavit in Support of a Judgment Creditor's Charge, before the Master, under an Advertisement for Creditors, pursuant to a Decree for carrying into Execution a Deed of Trust for Creditors.

In Chancery.

Between John Barron, esq.

Plaintiff;

and

William Lax, and others,

Defendants.

William Wood, esq. of &c. maketh oath and saith, that George Allan, esq. of the city of Exeter, merchant, is, and now standeth justly and truly indebted unto this deponent, in the sum of 236l. 12s. 3d. together with 19l. 6s. 8d. costs of suit, under and by virtue of a judgment recovered by this deponent, in his majesty's court of Exchequer, at Westminster, for the penalty of a bond, bearing date the 20th day of December, in the year 1807, and executed by the said George Allan to this deponent

in the penal sum of 473l. 4s. 6d. conditioned for payment, to this deponent, of the sum of 236l. 12s. 3d. on the 20th day of June then next ensuing the date thereof; and this deponent saith, that the sum of 255l. 18s. 11d. is now justly due and owing, to this deponent, under and by virtue of the said judgment so obtained as aforesaid, for principal money, interest, and costs of suit, and for which this deponent hath no other security whatever.

William Wood.

Sworn, &c.

Affidavit to prove a Pedigree under a Reference to a Master, to look into the Title to an Estate, and to inquire whether a good Title can be made.

In Chancery.

Between Thomas Purling, esq. Plaintiff;

“ and

William Chrisp, esq. and others,

Defendants.

William Chrisp, of Lilley, in the county of Hertford, esq. the defendant above-named, and Sarah his wife (late Sarah Taylor, spinster) severally make oath and say, that the said Sarah, together with Catharine, the wife of James Loundes, esq. of Paisley, in the parish of Renfrew, in that part of the united kingdom of Great Britain and Ireland, called Scotland, are the two grand-daughters, co-heiresses, and lineal descendants of William Taylor, esq. heretofore of the city of London, bookseller, to wit, the sisters and co-heiresses of Joseph Taylor, late of Honnington, in the county of Suffolk, esquire, deceased, who was the brother and heir of William Taylor, late of Winwick, in the county of Northampton, esq.

deceased, the eldest son and heir of William Taylor, heretofore of Winwick aforesaid, esq. by Catharine his wife, heretofore Catharine Smith, spinster; and which said William Taylor last named was the son and heir of William Taylor, heretofore of the said city of London, bookseller, as these deponents have heard, and verily believe.

William Chrisp.

Sworn, &c.

Sarah Chrisp.

This affidavit satisfied the purchaser, and the master reported that a good title could be made to the premises in question. (a)

(a) An Issue had been directed by the Court of Chancery, and upon a motion for a new trial the question was, whether a paper, offered in evidence, and which *Mr. Baron Graham* had rejected in the court below, ought to have been received as evidence. It was a pedigree drawn out by *Bridget Lloyd*, a maiden lady deceased, shewing that C. D. her relation, was related to A. B. made out after the doubt arose as to the pedigree; she herself was dead, and it was found amongst her papers. Serjeant *Williams, Abbot, and Bell*, for plaintiff, contended, that as she, if alive, might have been examined by releasing, that this paper was therefore admissible; if what has been spoken as hearsay is evidence, why should not that which is written? *Richards, Dauncey, Taunton, and Cooper*, for defendant, contra, that nobody could make evidence for himself: that B. Lloyd had an interest in establishing a relationship, and cited 13 Ves. 514. Salk. 268.

Sir William Grant, M. R. refused the new trial, because if *Mrs. Lloyd's* pedigree, written by herself, were evidence for her relation; so would her declaration have been evidence to shew that she was herself intitled to the estate. (a)

It should seem, that on a question of pedigree, the books of the *Fleet*, are evidence to shew the name by which a woman passed, when she was married there: though not evidence of a marriage celebrated even before the marriage act. (b)

Affidavit of Service of a Notice of Motion.

In Chancery.

Between John Doe, Plaintiff,

and

William Clark, Defendant.

George Birch, of &c. maketh oath and saith, that he, this deponent, did on the 10th day of July instant, serve Mr. Woodcock, the defendant's clerk in court, in this cause, with a notice in writing, purporting that the plaintiff intended to move this court on Wednesday next, being the second general seal after Trinity Term, or as soon after as counsel could be heard; that the defendant, William Clark, might be directed to attorn tenant, and pay his rent in arrear, and the growing rent for the farm and lands now in his possession, to Mr. Joseph Nichols, the receiver appointed in this cause, by delivering to and leaving the said notice with the clerk or agent of the said Mr. Woodcock, at his seat in the Six Clerks' office.

The mark of

×

George Birch.

Witness

John Smith.

Sworn at my office in Southampton Buildings, this 13th day of July 1816, the witness to the mark of George Birch being first sworn, that he had read over the contents to the said George Birch, and that he saw him make his mark,

F. P. Stratford.

Affidavit of the Amount of Interest directed to be
paid into the Bank upon Affidavit.

In Chancery.

Between Jerningham Cheveley, Plaintiff;
and
Jamineau Cheveley, Defendant.

John Tuffnal, of &c. maketh oath and saith, that the interest of the sum of 2000l. directed by the order made in this cause, the 15th day of June last, to be paid into the Bank by William Hands, esq. therein named, from the 25th day of March, in the said order mentioned, to the 24th day of June following, when the same is to be paid into the bank, in pursuance of the said order, at 5 per cent. per annum, amounts after deducting the property tax thereon, to the sum of 22l. 10s. making with the said sum of 2000l. the sum of 2022l. 10s.

John Tuffnal.

Sworn, &c.

ANSWER.

Title and Words of Course preceding an Answer.

The several Answer of John Leigh, Defendant, to the
Bill of Complaint of Peter Warburton, Complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception, that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto part or so much thereof, as this defendant is advised, is material or necessary for him to make answer unto; he answereth and saith, that, &c.

The formulary Conclusion to an Answer.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without that that there is any other matter, cause or thing in the complainant's said bill of complaint contained material, or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver,

maintain, and prove as this honourable court shall direct. And hereby prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

Words of Course preceding a Joint Answer.

The joint and several Answer of George Dutton and William Delves, two of the Defendants to the Bill of Complaint of Giles Manwarring and Thomas Troutbeck, complainants.

These defendants now and at all times hereafter saving and reserving to themselves, severally and respectively, all and all manner, &c. (*as before*) For answer thereunto, or unto so much thereof, as these defendants are advised is in any wise material or necessary for them to make answer unto, these defendants each answering for himself severally answering, say, That, &c. And these defendants farther answering in manner aforesaid, say, &c.

Words of Course preceding an Answer of Infants by Guardian.

The joint and several Answer of John Grosvenor, and Peter Davenport, Infants, under the Age of twenty-one Years, by John Crew their Guardian, two of the Defendants to the Bill of Complaint of Peter Shakerly, Complainant.

These defendants now and at all times, &c. These defendants by their said guardian severally answering say, &c.

Formulary Conclusion.

And these defendants in manner aforesaid say, they are infants: the defendant John Grosvenor, of the age of ten years or thereabouts; and the defendant, Peter Davenport, of the age of six years, or thereabouts. And they submit their right and interest, to the care and protection of this honourable court, without that, that, &c.

Words of course preceding an Answer of Persons Adults and of Infants.

The joint and several answer of John Cross, and Charles Living, Infants.

These defendants now, and at all times, &c. severally answering for themselves, say, &c. and these defendants ——— infants, answering by their said guardians, severally say, &c.

Conclusion.

And these defendants, the said ——— and ———, being all infants under the age of twenty-one years, they submit their respective rights and interests in the premises to the care and protection of this honourable court. And these other defendants deny, &c.

Words of course preceding a further Answer on Exceptions allowed.

The several Answer of I. D. to the Bill of Complaint of A. C. Complainant.

This defendant now, and at all times, &c. as in and by his former answer he hath saved and reserved for further answer unto the said complainants' said bill of complaint, or so much, &c.

Or thus,

— This defendant for further satisfaction to this honourable court, and for answer unto the several exceptions taken by the complainant to his former answer, doth answer and say, &c.

Words of course preceding an Answer to an amended Bill.

The answer of Peter Warburton, defendant, to the amended bill of complaint of George Grosvenor, complainant.

This defendant saving and reserving to himself as in and by his former answer he hath saved and reserved for answer to the said complainant's said amended bill, or so much, &c.

Conclusion.

And this defendant denies all and all manner of unlawful combination and confederacy in the complainant's said amended bill charged, without that, that there is any other matter or thing in the complainant's said amended bill of complaint contained material, &c.

ARTICLES OF EXCEPTION TO TESTIMONY.

ARTICLES of exception exhibited by G. S. complainant in a cause now depending, and at issue in the court of Chancery, wherein the said G. S. is complainant, and W. S. defendant, to discredit the testimony of W. S. a witness examined by *T. Pearce, Esq. one of the examiners of the said court, on the part and behalf of the said defendant.*

1st, The said G. S. doth charge and alledge that the said W. S. hath since his examination in this cause, owned and acknowledged that he is to receive and be paid, and also that he doth expect a considerable reward, gratuity, recompence or allowance from the said defendant, in the event of the said defendant recovering the premises in question in the said cause, or if the said cause be determined in his favor. And that the said W. S. is to gain or lose by the event of the said cause.

2dly, The said G. . doth charge and alledge that the said W. S. is a person of evil fame and character, and is generally reputed, and held to be so. And that he hath no regard to the nature or sanctity of an oath, and that he is a person whose testimony is not to be credited or believed.

If by commission : “ By virtue of a commission issued
“ out of the said court to W. W. and others directed for
“ the examination of witnesses in the said cause upon
“ interrogatories exhibited before them for that purpose,
“ and which said W. S. was examined in the said cause,
“ on the part and behalf of the said defendants.”

BILLS.

Formulary Conclusion to an original Bill, praying Letter Missive, and Process of Subpœna, &c.

May it please your lordship, the premises considered to grant unto your orator, your lordship's letter missive, to be directed to the said *John, Earl of Bridgewater*, desiring him to appear to and answer your orator's said bill of complaint, or in default thereof, his majesty's most gracious writ of subpœna, to be directed to the said *John, Earl of Bridgewater*, thereby commanding him at a certain day, and under a certain pain therein, to be limited personally to be and appear before your lordship in this honourable court and then and there full, true, direct and perfect answer, make to all and singular the premises: (a) *And further, to stand to, perform, and abide, such further order, direction, and decree therein, as to your lordship shall seem meet.* And that his majesty's attorney general, being attended with a copy of this bill, may appear to and answer the same; And your orator shall ever pray, &c.

Conclusion to a Bill, praying Writ of Injunction, and Ne Exeat Regno, and Process of Subpœna.

May it please your lordship to grant unto your orator not only his majesty's most gracious *Writ of Injunc-*

(a) In bills of discovery, or to perpetuate testimony, the words in italics are omitted.

tion, issuing out of and under the seal of this honourable court, to be directed to the said Peter Shakerly, to restrain him from proceeding at law, against your orator, touching any of the matters in question: and also his majesty's most gracious writ of *ne exeat regno*, issuing out of and under the seal of this honourable court, to restrain the said defendant, John Egerton, from departing out of the jurisdiction of this court; but also his majesty's most gracious writ or writs of subpoena, &c.

Conclusion to a Bill of Revivor.

—— personally to be and appear before your lordship, in this honourable court, *then and there to answer the premises*, (a) and shew cause, if he can, why the said suit and all the proceedings therein, should not stand revived, and be in the same plight and condition they were in at the time of the abatement thereof, and that the said cause and proceedings may be revived; and that the said John Egerton may stand to, perform and abide such order, direction, and decree therein, as to your lordship shall seem meet. And your orator will ever pray, &c.

(a) If an answer is not required, the words in italics are omitted.

Ancient Form of a Bill, filed in the Court of Chancery, in the Reign of King Edward the Fourth, copied from the Records in the Tower of London, one of the oldest to be found there.

To ye Right Reverend Fathyr in God and myful
gious Lord ye Bp of Bathe, Chanr of Eng-
land.

Shewethe full humbly yr servt & bedesman Nicholas
Blacburne of Yorke, mercht, yt whas ye sde Nicholas
had at Calleys ccciiii sarploes of woole, yre to be solde,
at whiche tyme, oon Willim Musthalle, of Yorke, mer-
chante, came to ye sde Nicholas at Yorke, desiring him
& prying, yt oon Thomas Burrel, which he sayde wase
his sister's son, & wase his factr & attorney in mer-
chandyse at Caleys, & had beene a ful true apprentice
& servante unto the sde Willm, might be factr & attor-
ney to the sde Nicholas, and sell ye sde wolle at Caleys,
saying that he might serryff theyme bothe there in yt
occupacion, als well as ye oon of theyme. And yre
uppon yr sde beseecher for ye great trust he had
to ye wordes of ye sayde Wm was agreede yt ye sayde
Thomas shold be merchante and seller als welle of
ye wolles & merchandys wche yr sayde beseecher
shold delyr unto hime by indre as of ye wolles &
merchandyses of ye said Willm after whiche tyme ye
sde Willm come to yr sde beseecher the iiij daye of Nov
yre & 11 yr of King Henry Sext saying that ye sde
Thomas was towds Caleys & he ought in his own pson
be at Yorke for to attd to make indres withe yr sde be-
seechere of the sde wolles & merchandys, but yt he had
leffte his sele with the sde Wm for to make & sele indres

with yr sde beseecher of the resceyt and takyng charg
of ye sde wolle in ye name & on ye behalfe of ye sde
Thomas & in the same forme ye sde Willm ye day &
yere afsde madde indres in ye name of ye sde Thomas
wth yre sde beseecher of ye sde wolle and on his behalfe
seled yre to pte of ye same indres & aft ye tyme ye
sde wolle was sould & uttered at Caleys by ye sde
Thomas of ye value of wche wolle yre is yet unpde to
yr sde beseecher liij;—iii wch he had desyred oft
tyme of ye sde Thomas to be contente & payd ye
whiche Thomas says yt he resceyed all the sde wolle
of ye sde Wilm & by him was charged for to sell it &
answer hime yreof & noght to answer nor to be charge-
able yreof to yr sde beseecher & that he deld note his
sele to ye sde Willm nor that he was ever agreed nor
assented yt ye same Willm shold make nor sele ye sde
indres in his name nor on his behalfe & yt he hathe fully
contente & agreed the sde Willm of ye value of all ye sde
wolles ye wche ye sde Willms denys and says ye contrie
of all this so that yre sde beseecher stands doubtful of
wheder of the sde Thomas or Willm he shd bee con-
tente of ye sde moneye for als myche as wd bringe thyme
both togedyr to make rekkonyng thf wherfor like it to
yre good gce to synd to ayther of them a wrytte to
come befor you in ye Chancerye at a certeyne day uppon
a certayne peine by you to bee limit to bee examined of
yis matter so yt yre sde beseecher may be truly
satisfied & contente betwyne thyme two of his sde dette
as ryghte goode fay the ande conseiynce wyll & hee
shalle fulle humbly pry for you &c.

CERTIFICATES.

A **CERTIFICATE** is a matter in writing, under the hand or hands of the judges of the courts of law, or the masters and officers of this court, informing the court of something under their respective administration or cognizance that is done, or not done, or misdome, which a standing or other order, or the mandate of the court, or the reason of the thing, requires them to acquaint the court with. and these the court gives much credit to, especially from the masters (a) and standing officers of the court.

The certificate of commissioners of any thing touching the execution of their commission, ought to be filed before it is read.

A Six Clerks' Certificate of an Answer being filed, and no Proceedings since, in order to dismiss a Bill for Want of Prosecution.

In Chancery.

Between John A'Gull, Plaintiff;
and
John A'Gudgeon,, Defendant.

These are to certify, that the defendant's answer to the

(a) The master certified, that papers were not delivered in; the clerk offered to prove they were delivered in; but the court would not suffer an averment against the master's certificate. Sel. Cas. Chanc. 5. Prac. Reg. 100.

plaintiff's bill, was filed the 6th day of March, 1815, since which there has been no further proceedings, as appears by my book. Dated the 23d day of January, 1816.

William Luther Sewell.

A Six Clerks' Certificate of no Proceedings after Replication to dismiss a Bill for Want of Prosecution.

In Chancery.

Between John Adams, Plaintiff;
and
John Gudge, Defendant.

I hereby certify, that the defendant's answer to the plaintiff's bill was filed the 10th day of April, 1815, and that the plaintiff replied thereto the 28th day of November following, since which there has been no further proceedings, as appears by my book. Dated the 6th day of July 1816.

Francis Vesey.

A Six Clerks' Certificate of Pleadings being filed in Order to set down a Cause for hearing.

In Chancery.

Between John Adams, Plaintiff;
and
John Wilson, Defendant.

These are to certify, that the plaintiff's bill, and the defendant's answer, and the plaintiff's replication to the defendant's answer, are duly filed, as appears by my book, and I have seen the depositions published. Dated the 4th day of February, 1816.

Henry Hanmer.

The like Certificate, in order to set down a Cause
for hearing, upon Bill and Answer.

In Chancery.

Between John Jones, Plaintiff;
and
John Adams, Defendant.

I do hereby certify, that the plaintiff's bill, and the
defendant's answer, are duly filed, as appears by my
book. Dated the 2d day of March, 1816.

John Kipling.(a)

A Certificate from the Examiner, of a Party not
attending to be examined.

In Chancery.

Between John Hart, Plaintiff;
and
John Gudge, Defendant.

I do hereby certify, that on the 23d day of January
last, interrogatories were exhibited at my office, by the
complainant in this cause, for the examination of the de-
fendant, touching a contempt, alledged to have been by
him committed, for breach of an injunction issued in this
cause, since which time the defendant hath not attended
to be examined thereupon. Dated the 3d day of Febru-
ary, 1816.

John Pearce, Examiner.

(a) If the Six Clerk who filed the bill or answer be dead or
removed, and no successor appointed, the master of the rolls
signs the certificate.

A Master's Certificate of taxing Costs of a Mortgagee, coming in under a Decree.

13th May, 1816.

Between William Robinson, esq.

Plaintiff;

and

Henry Harrington, esq. and

others,

Defendants.

In pursuance of an order made in this cause, the 28th day of April last, I have been attended by Mr. George Jackson, the clerk in court for the plaintiff, and for Richard Helsam, a mortgagee of part of the premises in question, in this cause; and by the solicitor for the defendant, Harrington; and in their presence, have considered of the said Richard Helsham's bill of costs, in the said order mentioned, amounting to the sum of twenty-seven pounds, one shilling, and two-pence; and I have taxed the same, at the sum of twenty pounds and seven shillings, which is to be paid to the said Mr. Jackson, out of the money to arise by sale of the bank annuities, in the said order mentioned, as the said order directs. All which I humbly certify to this honourable court.

John Springet Harvey.

A Master's Certificate of Books, Papers, and Writings, being left with him pursuant to a Decree.

13th July, 1816.

Between Sir William Windham, bart. Plaintiff;

and

William Windale, esq. Defendant.

In pursuance of a decree, made on the hearing of this cause, bearing date the 13th day of May, 1816, I

have been attended by the solicitor for the plaintiff, and by the defendant, William Windale, and by his solicitor. And the said defendant hath this day produced before, and left with me, several books, papers, and writings, by affidavit and schedule, and hath by the said affidavit made oath, that he hath no other books, papers, or writings, in his custody or power, concerning the matters in question in this cause, than what are mentioned and set forth in the said schedule, save and except as in the said affidavit is excepted. All which I humbly certify to this honourable court.

Fra. Paul Stratford.

A Master's Certificate, that a Commission to examine Witnesses is necessary.

20th January, 1816.

Between Timothy* Potten, esq.

Plaintiff;

and

Richard Oakley, esq. and John

Swaine, esq. an Infant, by

William Windale, his Guar-

dian

Defendants.

In pursuance of the decree, made on the hearing of this cause, dated the 26th day of June last, I have been attended by the clerk in court for the plaintiff; and the said plaintiff's clerk in court, having exhibited before me a charge on behalf of several creditors of John Swaine, esq. deceased, the testator in the said decree named, in respect to several debts claimed to be due to them respectively from the said testator's estate on several mortgages. And it being alledged, that the said creditors, and their witnesses, who can prove such charges, live, or reside

in the county of York, I humbly certify that I think it reasonable a commission should issue there, for the examination of the said creditors and their witnesses, returnable without delay ; wherein the plaintiff and defendants may join, if they think fit, this, being the twentieth day of January, 1816.

John Campbell.

A Master's Certificate of settling a Case for the Opinion of a Court of Law.

14th November, 1816.

Between Francis Adams, and Mary
Adams, Plaintiffs ;
and
Elizabeth Prigg, Henry Durbin, John Willatt, James Bernard, and Ann his Wife, by original bill ; the said James Bernard, by supplemental bill, Defendants.

In pursuance of the decree made on the hearing of this cause, bearing date the 5th day of February, 1815, I have been attended by the clerk in court for the plaintiffs, and by the solicitor for the defendants, and have considered of, and settled a case for the opinion of the court of King's Bench, on the question in the said decree mentioned, which said case is written or contained in five sheets of paper ; and in testimony of my having settled the same, I have signed my name in the margin of the last sheet thereof, which I certify and submit to this honourable court.

John Simeon.

**The Form of a Certificate from a Court of Law,
upon a Case made for their Opinion by the
Lord Chancellor.(a)**

Between William Barret, and the Rev.

Carew Rennell, clerk, Plaintiffs ;
and

The Rev. John Glubb, and

Denys Rolle, Defendants.

12th May, 1775. Upon opening of this cause before the right honourable the lord high chancellor of Great Britain, and on hearing counsel, his lordship was pleased to order, that the following case be made for the opinion of the judges of his majesty's Court of Common Pleas, on the question subjoined.

The plaintiff, Barret, having notice, that Charles Morgan, clerk, then incumbent of the rectory of Higham, in the county of Somerset, which is a rectory, with cure of souls, was on his death-bed, and that it was uncertain

(a) The courts of law, until very lately, refused to answer a case directed by the Master of the Rolls. In *Daintry v. Daintry*, which was a case sent by the Master of the Rolls to the court of King's Bench, *Ld. Kenyon, Ch. J.* took an opportunity of observing, that he believed *there was no instance in which the court ever certified their opinion on a case sent there from the Master of the Rolls.* In *Colson v. Colson* (b) it was refused ; that he thought it an idle formality, and he should feel no reluctance in certifying in such cases, because it was convenient to the suitors of the court. And the court certified their opinion accordingly ; (c) since that period cases have been sent from the Rolls, and certificates from the court of King's Bench have without any objection been returned, and the practice is now considered as settled.

whether he should live over the night, purchased the affidavit of the defendants, Glubb and Rolle. The incumbent died the next day, and the purchaser presented the plaintiff, Rennell, as his clerk on that avoidance.

Whether the presentation be void, as being upon a simoniacal contract?

We have heard counsel on both sides, and considered this case, and are of opinion the presentation is not void, it not appearing to us to have been made upon a simoniacal contract.

William de Grey,
H. Gould.
W. Blackstone.
G. Nares.

The Form of a Judge's Certificate of the Trial at the Assizes, of an Action brought by an Order of the Court of Chancery.

Between Jeremiah Rawson, Plaintiff;
and

John Ramsden, and wife, Defts.

I do hereby humbly certify, to the right honourable the lord chancellor, that this cause was tried before me at the last assizes, holden for the county of York, by a special jury, after a view of the premises in question; and that the verdict given for the plaintiff (particularly set forth in the postea) was to my satisfaction; that the trial lasted about twelve hours; and a great deal of written evidence, and a great number of living witnesses, were produced on both sides. I thought the balance of evidence turned in favour of the plaintiff; and I believe the jury could not but receive a good deal of additional light from the view of the places in dispute. So that upon the whole, my opinion is, that they gave a very right verdict.

21st Nov. 1815.

John Bailey.

Certificate of three Senior Masters, under an Order of Reference upon hearing Exceptions to Bill of Costs.

In Chancery, 11th March, 1766.

Between Barth. Hammond and others, Plaintiffs;
and

Samuel Wordsworth and others, Defendants.

In pursuance of your lordship's order, bearing date the 30th day of October, 1765, whereby it is directed to us to peruse the exceptions (a) in the said order mentioned, and to certify to your lordship *whether the charges therein contained for solicitors, agents, and clerks going over to carry and execute foreign commissions, and the several expences relative thereto, have been usually, and if so in what cases allowed*: We have been attended by the clerks in court and solicitors for the plaintiffs, and for the defendant Wordsworth, and have directed diligent inquiry to be made touching the matters in the said order mentioned; but we do not find any case where bills of costs have been taxed by any master of this court, under such circumstances as attend the present case, nor have any of the parties in this cause laid before us any reports made by a master of this court of the taxation of the costs of executing foreign commissions, where any allowance has been made for solicitors, attorneys or clerks going over to carry and execute such commissions, and the several expences relative thereto: EXCEPT that the plaintiffs have produced to us a bill of costs, brought in before Mr. Spicer, late one of the masters of this court, and a report made thereon the 13th day of October, 1748, in a cause where Clement Trafford late Boehm was plaintiff, and Charles Boehm and others were defendants; in which cause a commission for the examination of witnesses was executed at Petersburg, and the costs thereof were paid out of the estate

(a) Vid. Infra, title Exceptions.

in question, whereof the plaintiff, the infant, was tenant in tail in possession, with remainder over to the said Charles Boehm, whereby it appears to us that in the taxation of the said bill of costs the master has allowed the sum of two hundred and fifty pounds, part of the sum of four hundred pounds charged in the said bill, to be paid to Mr. Daniel Conduit, attorney-at-law of this kingdom, who carried and brought back the plaintiff's commission for his journey and expences from England to Petersburg and back again, to the end that the said commission might be duly executed and returned, he being gone from the 14th of June to the 16th of December, 1744, in all one hundred and eighty-four days. And likewise, several other sums of money charged for the expences attending the execution of the said commission: AND WE further find that *in general it is not the practice to send agents from this kingdom to execute commissions in those foreign countries where such commissions are frequently executed, but that written instructions are sent from hence by which commissioners are enabled to execute them without other assistance.* And we believe, in the case above mentioned costs were allowed on account of the apparent necessity there was of sending over an agent, which we think in some cases may be necessary. But that necessity must always depend upon the circumstances of each particular case. All which we humbly certify and submit to your lordship's judgment.(a)

Rich. Edwards.

Tho. Lane.

Peter Holford

(a) By order, dated 13th of March, 1766, this certificate and the exceptions, came on, and upon payment of twenty pounds over and above what was allowed by Mr. Eames's report, dated 14th of March, 1765, the exceptions were by consent over-ruled, and the five pounds deposit paid back to the plaintiff. *See post. title Exceptions.*

A Certificate and Examination of a Feme Covert
intitled to Money or Stock in a Cause.

In Chancery.

Between Thomas Day, Plaintiff.
and

Dame Frances Cann, Elizabeth Day,
the wife of the Plaintiff Thomas Day,
and Sir R. Cann, Defendants.

The Examination of the Defendant Elizabeth Day, the
Wife of the Complainant Thomas Day, taken pur-
suant to an Order made in this Cause, dated the 10th
day of March, 1755, to us and others directed.

The said defendant Elizabeth, the wife of the said
Thomas Day, having been solely* and separately ex-
amined apart from her said husband, by us whose names
are here under-written, *How and in what manner and
to whom she is willing and desirous* that the sum of
1500l. to which she is intitled under the will of the tes-
tatrix, Elizabeth Addison, in the pleadings in this cause
named, the late mother of the said Elizabeth Day, or the
securities on which the same, or any part thereof hath
been placed out, shall be paid, transferred or assigned,
and the said order having been read over, and the pur-
port and effect thereof, explained to her, for answer there-
unto *saith*, That she is willing and desirous, that the
said sum of 1500l. to which she is intitled as aforesaid
under the said will of the said testatrix, Elizabeth Addison,
her said late mother, deceased, or the securities on which
the same, or any part thereof, hath been placed out, should
be paid, transferred, or assigned to her said husband, the
said complainant Thomas Day, to the intent that he
may employ the said money in his trade or business of

a merchant, and that it will be greatly for the benefit of herself, and family, to have the same so employed; and that she did thereby freely and voluntarily consent that the same be paid, transferred, or assigned to him accordingly.

Elizabeth Day.

Witness, J. Horwood.

We whose names are hereunto subscribed, do humbly certify to this court, that in pursuance of the above mentioned order, dated the 10th day of March, 1755, we have this present day, solely and separately apart from the complainant Thomas Day, examined the said defendant Elizabeth Day, the wife of him the said Thomas Day, *how and in what manner, and to whom she is desirous that the said sum of 1500l. to which she is intitled under the will of the said testatrix, Elizabeth Addison, her mother, or the securities on which the same or any part thereof hath been placed out, shall be paid, transferred or assigned,* and have taken such her examination in writing, signed by her above written and set forth. Dated this 5th day of May, 1755.

Francis Freeman.
George Tyndall.

Witness, J. Horwood.

In Chancery.

Between Thomas Day
and

Plaintiff.

Dame Frances Cann, Elizabeth Day,
the wife of the said Thomas Day, and
Sir Robert Cann, Defendants.

Joseph Horwood, of the city of Bristol, esq. maketh oath and saith that he was present and did see the above-

named defendant, Elizabeth Day, the wife of the complainant Thomas Day, sign the paper writing hereunto annexed, purporting to be her examination, pursuant to an order of this court, made in this cause, dated the 10th day of March, 1755; and this deponent saith that the name Elizabeth Day, set and subscribed thereto, is of the proper hand-writing of the said Elizabeth Day, the wife of the complainant Thomas Day, and that he did also see Francis Freeman, and George Tyndall, both of the city of Bristol, gentlemen, respectively sign the certificate to the said examination, hereto annexed; and that the names, Francis Freeman, and George Tyndall, to the said certificate set and subscribed, are of the respective proper hand-writing of them the said Francis Freeman and George Tyndall. And this deponent further saith, that the name J. Horwood to the said examination, and certificate, set and subscribed as the witness attesting the same, is of the proper hand-writing of this deponent.

J. Horwood.

Sworn, &c.

The decree or order declaring the right of a feme covert to money or stock: to relieve the party from the inconvenience of a personal attendance, the court upon suggestion at the hearing will give directions in the decree for taking the separate examination of the feme covert as to her disposal of the money or stock, and will appoint by the decree, commissioners by name for that purpose; or an order may be obtained upon motion or petition authorizing persons, naming them in the order to take the separate examination of the feme covert how and in what manner, and to whom, she is willing and desirous the money or stock should be paid or transferred: a slight application would be sufficient to obtain the order, which being drawn up, passed and entered, must be delivered to the commissioners named in the order, and a time and place must be appointed by them for the examination of the feme covert, separate and apart from her husband: the commissioners or two of them at least attending, one of the commissioners must read

over and explain the order to the feme covert, and her examination thereon must be taken down in writing, and read over and explained to her, after which she must sign her name thereto in the presence of the commissioners, and of an attesting witness; the commissioners then prepare a certificate of the execution of the order, and of the examination of the feme covert, which must be ingrossed, usually at the foot of the examination, and signed by two or more of the acting commissioners, in the presence of the attesting witness: and the execution of the examination, and certificate, must be verified by the affidavit of the witness, and annexed thereto as an exhibit: the affidavit and exhibit must be filed at the affidavit office, and an office copy taken, to be read upon an application for an order for payment or transfer of the money or stock, which may be by petition stating sufficient of the decree, or order, the examination and certificate, and praying the requisite order, for the above purpose, and which upon hearing, will be ordered as of course, and the order being drawn up, passed, and entered, may be acted upon at the accountant general's office, at the bank, or in whatever hands the property may be.

Lord Eldon, upon an application, under the return of a certificate, and examination of a feme covert, observed that the return though conformable to some late loose proceedings, was by no means agreeable to the practice of the court and the ancient form, that these private examinations of ladies in the country, were more frequently examinations by the husband than by the commissioners; and that upon a subject of so much consequence, his lordship, did not choose to depart from the form, which was most carefully settled, with the view to give as much protection as the circumstance would enable the court to give; and he was pleased to express, that in future, he expected that the returns to these commissions should be made according to the *ancient and proper form*.

Some precedents of comparatively modern date, 1783 and 1786, were produced by the register, which his lordship referred to, apparently with approbation. (a)

The above form, older than any of those produced, was prepared by Mr. Sewell, afterwards M. R. and found amongst the papers of the late Mr. Joseph Blissett, one of the most experienced clerks in court, at a period when the six clerks office engrossed nearly the whole of the business of the court of Chancery : that office then consisted of 72 clerks in court in full practice, gentlemen of the greatest experience in their profession, of unblemished character, and of the first respectability, amongst whom might be found, Lord Redesdale, late lord high chancellor of Ireland, Mr. Fox, Mr. Robinson, Mr. Douce, Mr. Cheveley, Mr. Edward Woodcock, Mr. Elborough Woodcock, Mr. Nichols, Mr. Edwards, Mr. Wainewright, Mr. Chester, Mr. Colman, Mr. Trollope, Mr. Hill, Mr. Fell, Mr. Van, and William Michael Lally, esq. with whom Sir Samuel Romilly was placed in *statu pupillari*.

CHARGES AND CLAIMS

OF

CRÉDITORS

Are to be fairly written upon unstamped draft Paper, and left at the Master's Office with the Affidavit in support of them, and a Warrant taken out upon leaving the Charge and Affidavit, and served upon the respective Clerks in Court for Plaintiff and Defendant, whose Names the Master's Clerk will give, and to be charged 8d. per folio for Drawing and fair Copy.

The Charge of Debt of a simple Contract Creditor, coming in before a Master under a Decree.

In Chancery.

Between **Lewis Williams, an infant,** by
his next friend, - - - Plaintiff;
and
Henrietta Fenn, widow, Wil-
liam Templeman, gentleman,
and others, - - - Defendants.

The charge of John Locker, a creditor of Thomas Williams, late of Anderstone, in the county of Dorset, deceased, the testator in the pleadings named.

The said John Locker charges that there is due to him for goods sold and delivered by him the said John Locker, to the order and for the

£ s. d.

use of the said Thomas Williams, in his life-time the sum of 7l. 12s. 2d. and for which he has no security whatever . - -

7 12 2

And the said John Locker craves leave to add to or alter this his charge, as he shall be advised.

The Form of Affidavit in Support of the above Charge.

John Locker, of &c. shopkeeper, maketh oath and saith, that Thomas Williams, late of Anderstone, in the county of Dorset, esq. deceased, in his life-time, became justly and truly indebted to this deponent in the sum of seven pounds, twelve shillings, and two-pence, for butter and cheese, sold and delivered by this deponent to the order and for the use of the said Thomas Williams, in his life-time; And this deponent saith; that he hath never, either in the life-time of the said Thomas Williams, or since his decease, received any security or satisfaction whatever for the said debt; but that the same still remains justly due and owing to this deponent; and this deponent saith, that the paper writing hereunto annexed, marked with the letter (W) is, and doth contain a just and true account, and particular of the butter and cheese so as aforesaid, sold and delivered by this deponent to, and to the order, and for the use of, the said Thomas Williams, deceased.(a)

Sworn at, &c. before Walter Erle, a Master Extraordinary, &c.

John Locker.

(a) This is only necessary, when specially required.

(W)

Thomas Williams,

1816.

To John Locker, Dr.

1st Oct.

£ s. d.

To 6 dozen, and 2lb. butter

2 8 2

To 4 cwt. of cheese

5 4 0

7 12 2

This paper writing, marked (W), is referred to in the affidavit hereunto annexed.

Walter Erle.

The Charge of a Creditor by a Promissory Note coming in and proving his Debt under a

In Chancery.

Between James Hook, and others,
and

Plaintiffs ;

Richard Highway, clerk, and others, Defts.

The charge of Harlequin Cutler, a simple contract creditor of Peter Polehampton, deceased, the testator in the pleadings named.

The said Harlequin Cutler, charges, that the said Peter Polehampton, deceased, was in his life-time and at the time of his death, justly and truly indebted unto him the said Harlequin Cutler, upon and by virtue of a promissory note of him the said Peter Polehampton, bearing date the 14th day of December 1815, in the sum of 54l. 12s. 8d. payable to the said Harlequin Cutler, or order, two

£ s. d.

months after the date thereof. And the said Harlequin Cutler further charges, that the whole of the said principal sum of 54l. 12s. 8d. is now justly due and owing to him the said Harlequin Cutler, and that he hath not any other security for the payment thereof 54 12 8
 For interest thereon from the 17th day of February 1815, when the said promissory note became payable, to the day of being years, months, and days, the sum of

And the said Harlequin Cutler craves leave to add to or to alter this his charge, as he shall be advised.

A Bond Creditor's Charge brought in before the Master under a Decree, and Advertisement for Creditors.

In Chancery.

Between Jenkin Reading, esq. Plaintiff;
 and

William Hale, esq. and others, Defendants.

The charge of Henry Bradbee, a specialty creditor of John Joyner, deceased, the testator in the pleadings named.

The said Henry Bradbee charges that the said testator, John Joyner, deceased, was in his life-time, and at the time of his death, justly and truly indebted unto him the said Henry Bradbee, in the sum of 350l. for money lent and advanced by him the said Henry Bradbee, for securing the repayment whereof, with in-

£ s. d.

terest, the said John Joyner made and executed a bond or obligation, in writing, bearing date the 4th day of January, 1811, in the penal sum of 700*l.* conditioned for payment, to the said Henry Bradbee, his executors, &c. of the sum of 350*l.* and interest, on the 4th day of June then next ensuing. And the said Henry Bradbee, further charges, that the whole of the said principal sum of 350*l.* and interest is now due and owing from the estate and effects of the said John Joyner; and for payment, whereof the said Henry Bradbee hath no other security than the said bond

350 0 0

For interest on the said principal sum of 350*l.* from the said 4th day of January, 1811, to the day of , being years, months, and days, at 5*l.* per cent. per ann. the sum of - .

And the said Henry Bradbee, craves leave to add to, or alter this his charge, as he shall be advised.

The Charge of a Judgment Creditor coming in and proving his Debt, under a Decree.

In Chancery.

**Between William Robinson and another, Plaintiffs;
and**

Henry Harrington, and others, Defendants.

The charge of Mary Hawse, widow, one of the judgment creditors of the defendant, Henry Harrington.

The said Mary Hawse charges, that in Michaelmas term

in the year 1810, she recovered a judgment in his Majesty's court of King's Bench, at Westminster, against the said defendant Henry Harrington, for a debt of forty-eight pounds, eight shillings and eight pence, the penalty of a bond, bearing date the first day of November, 1809, executed by the said Henry Harrington, to her the said Mary Hawse, and sixty-three shillings damages, and costs of suit; which bond the said Mary Hawse charges, was conditioned for payment of the principal sum of twenty-four pounds, nine shillings, and four pence, with lawful interest for the same. And the said Mary Hawse charges, that there is now due and owing to her, for principal money, interest and costs, upon and by virtue of the said bond and judgment, the several sums hereinafter mentioned. (*that is to say*);

£ s. d.

For principal money due on the said bond, the
sum of - - - - - 24 9 4

For interest thereof, from the 1st day of November, 1809, to the - day of
being - years, - months, and - days,
at the rate of 5l. per cent. per annum,
the sum of * - - - -

For the damages and costs assessed and taxed,
on the said judgment, the sum of - 3 3 0

And the said Mary Hawse craves leave to add
to or alter this her charge, as she shall be
advised.

A Charge by a Judgment Creditor, brought in before a Master, in pursuance of an Advertisement for Creditors.

In Chancery.

**Between Samuel Purlawent, and another, Plaintiffs ;
and**

Joseph Nicholls, esq. and others, Defts.

The charge of Frances Servant, one of the judgment creditors of the said defendant, Joseph Nicholls.

The said Frances Servant charges, that the sum of one hundred and seventy-five pounds, being justly due and owing to her from the said Joseph Nicholls, for a long arrear of wages in the service of the said Joseph Nicholls ; he the said Joseph Nicholls, for better securing the payment thereof, by his bond, or obligation in writing, bearing date on or about the 28th day of March, 1809, became bound to the said Frances Servant, in the penal sum of 350l. conditioned for the payment of the sum of 175l. with lawful interest for the same, on the 28th day of June, then next ensuing. And that as a further security for payment of the said sum of 175l. and interest, the said Joseph Nicholls, esquire, together with John Nicholls, esquire, his eldest son, lately deceased, on or about the 29th day of August, 1809, executed a warrant of attorney, for confessing a judgment in his Majesty's court of Common Pleas, at Westminster, for the sum of 350l. debt by mutuatus, besides costs of suit ; and that pursuant to the said warrant, judgment was entered up at the suit of the said Frances Servant, against the said Joseph Nicholls and John Nicholls, for the said 350l. debt, and sixty three shillings costs, as of Trinity Term in the said year 1809. And the said Frances Servant admits, that the said

bond and warrant of attorney, were given for one and the same sum of money. And that the said judgment is still in force and unsatisfied, as to every part of the said debt and costs.

£ s. d.

The said Frances Servant therefore charges,
that there is justly due and owing to her
for principal money on the said judgment
the sum of - - - 175 0 0

And for interest thereof, from the said 28th
day of March, 1809, being the date of the
above-mentioned bond, to the . day
of being years, months,
and days, after the rate of 5l. per cent.
per ann. the sum of - - -

And for the costs of the said judgment the
sum of - - - 3 3 0

And for costs of reviving the said judgment
by *scire facias* - - - 9 7 6

And the said Frances Servant craves leave to
add to, or alter this her charge, as she shall
be advised.

A Charge by a Judgment Creditor of several
Judgments, brought in before the Master under
a Decree.

In Chancery.

Between John Adams, and others, Plaintiffs;
and

John Gregory, and others, Defendants.

The charge of Joe Ferrett, gentleman, one of the
judgment creditors of the said defendant, John
Gregory.

The said Joe Ferrett charges, that he, in Hilary term,

1802, recovered a judgment in his majesty's court of King's Bench, at Westminster, against the said defendant, John Gregory, for a debt of 200l. the penalty of a bond, bearing date the 4th day of December, 1799, executed by the said John Gregory, to him the said Joe Ferrett, and five pounds five shillings damages and costs of suit; which bond as the said Joe Ferrett charges, was conditioned for the payment of the principal sum of 100l. with lawful interest for the same, on the 5th day of June next ensuing the date of the said bond; and the said Joe Ferrett further charges, that there is now remaining justly due and owing to him for principal money, interest, and costs, upon and by virtue of the said bond and judgment, the said several sums herein-after mentioned, (*that is to say*);

£ s. d.

For the principal money due on the said bond 100 0 0

For nine years' interest thereof, from the 4th day of December, 1800, (to which time the interest thereof was paid up and satisfied) to the 4th day of December, 1809, at 5l. per cent. per ann. - - 45 0 0

For further interest thereof, from the said 4th day of December, 1809, to the day of being years, months, and days, the sum of

For damages and costs, assessed and taxed on the said judgment - - 5 5 0

The said Joe Ferrett also charges, that in Hilary term, 1793, he the said Joe Ferrett, as administrator of the goods and chattels, rights and credits, of Walter Sharp, gent. his late father-in-law, deceased, recovered another judgment in the said court of King's Bench, at Westminster, against the said John Gregory, for a debt of 348l. being the collective account of the respective penalties of two several bonds, executed by the said

John Gregory to the said Walter Sharp, the one dated the 4th day of December, 1799, in the penalty of 200*l.* conditioned for the payment of 100*l.* principal money, with lawful interest for the same, on the 5th day of June next ensuing, the date thereof; and the other bond, dated the 5th day of December, in the said year 1799, in the penalty of 148*l.* conditioned for the payment of 74*l.* principal money, with lawful interest for the same, on the 6th day of June next ensuing the date thereof; and five pounds, ten shillings, damages and costs of suit. And the said Joe Ferrett further charges, that there is now remaining justly due and owing to him for principal money, interest, and costs, upon and by virtue of the two last mentioned bonds, and the judgment obtained thereon, the several sums herein-after mentioned, (*that is to say*)

£ s. d.

For the principal money due on the first of the said two bonds last mentioned	100 0 0
For nine years' interest thereof, from the 4th day of December, 1800 (to which time the interest thereof was paid up and satisfied) to the 4th day of December, 1809, at 5 <i>l.</i> per cent. per ann. the sum of	- 45 0 0
For further interest thereof, from the said 4th day of December, 1809, to the day of being at the like rate	
For the principal money due on the last of the said two bonds last mentioned	- 74 0 0
For nine years interest thereof from the 5th day of December, 1799, the date of the said bond, to the 16th day of December, 1809, at 5 <i>l.</i> per cent. per ann. the sum of	- 33 16 0
For further interest thereof, from the said 16th day of December, 1809, to the	

ments; and one pound for every one hundred pounds of the said other monies which should be received and paid by plaintiff for or on account of the said Peter Gough as aforesaid. And that plaintiff did thereupon become agent and receiver of the said Peter Gough, and continued in such employment from the 9th of January, 1769, until the decease of the said Peter Gough, which happened on the 29th of September, 1786.

That during the time that plaintiff continued to be such agent and receiver for the said Peter Gough, they had frequent settlements of all accounts between them respecting the said receipts and payments, and, at every one of such settlements such allowances as aforesaid, were made by the said Peter Gough to the plaintiff for his labour, &c. in receiving and paying the rents due to said Peter Gough, and other monies for and on his account as aforesaid. And at every such settlement the account was signed by the said Peter Gough and plaintiff, and all vouchers for money paid by the plaintiff on account, and for the use of the said Peter Gough, were at every such settlement delivered up by the said Peter Gough, and acknowledged to have been received by him, and the balance to the plaintiff at each of the said settlements was by the said Peter Gough ordered to be carried forward to the next accounts.

That the settlement of accounts between the plaintiff and the said Peter Gough was upon the 8th day of July, 1786, and that account was allowed and signed by the said Peter Gough and the plaintiff, and all the vouchers for monies mentioned in that account to have been paid by the plaintiff, were then delivered by the plaintiff to the said Peter Gough, and in such settlement acknowledged by him to be received; and he directed the balance found due to the plaintiff, amounting to sixty-four pounds, fourteen shillings and nine pence, to be carried forward to the next account to be made between the plaintiff and the said Peter Gough.

That the said Peter Gough, on the 7th day of May, 1770, having occasion for money, applied to the plaintiff to advance to him the sum of one hundred and fifty pounds upon his bond, which the plaintiff did advance and lend accordingly, and the said Peter Gough gave the plaintiff his bond for the same, bearing date the 7th of May, 1770, in the penal sum of three hundred pounds, conditioned for the payment of one hundred and fifty pounds, with lawful interest, upon the 7th of November then next following.

That the said sum of one hundred and fifty pounds was not paid at the time mentioned in the bond, but the said Peter Gough on the 25th of November, 1770, paid the plaintiff one hundred pounds, in part, together with the interest due for the said one hundred and fifty pounds, up to the 16th of the said month of November, since which time the interest money for the remaining fifty pounds principal money has been regularly, from time to time included in the accounts, settled between the plaintiff and the said Peter Gough.

That the said Peter Gough departed this life on or about the 29th of September 1786, having first duly made and published his last will and testament, in writing, bearing date on or about the 9th of January, 1786, and thereof appointed the defendants, Richard Gough, Peter Gough, and Catharine Hall, executors and executrix thereof. And the said will was proved in the prerogative court of Canterbury by the said Richard Gough and Peter Gough.

That since the said settlements of the said account, between the plaintiff and the said Peter Gough, deceased, on the said 8th day of July, 1786, up to the 29th of September following, being the time of the death of the said Peter Gough, the plaintiff received in respect of the rents of the said testator's estates, the sum of eighty-three pounds ten shillings, and in respect of his other concerns

the sum of six hundred and forty-eight pounds, eighteen shillings, and ten pence, making together the sum of seven hundred and thirty-two pounds, eight shillings and ten pence, the whole whereof the plaintiff hath duly accounted for.

That the plaintiff paid on account of the testator's estate, after his decease, for bills drawn in his life-time, the sum of one hundred and seventy-three pounds and four shillings.

£ s. d. £ s. d.

The plaintiff therefore charges that

there is due to him for commission .

on the said sum of 83*l.* 10*s.* the sum

of - - 2 1 6

And for commission on the said sum

of 648*l.* 18*s.* 10*d.* the sum of 6 9 0

And for commission on the said sum

173*l*. 4*s*. so paid after the testator's^o

death, as above stated, the sum of 1 13 6 10 4 0

For principal money remaining due

on the said bond	-	50	0	0
------------------	---	----	---	---

And for interest thereon, from the

10th day of May, 1786, to the 23d

day of February, 1807, when the

decree in this cause was pronoun-

ced, the sum of - 52 0 0 102 0 9

And for balance of the last settled

account	-	-	64 14 0
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And the plaintiff craves leave to amend and alter, &c

A Charge of a Mortgage, brought in before a Master under a Decree, and Advertisement for Creditors.

In Chancery.

Between Ives Whitbread, and others, Plaintiffs;
and

Jacob Hinde, esq. and others, Defendants.

The charge of George Samuel Watts, esq. and Henry Leycester, esq. creditors by mortgage of Samuel Whitbread, esq. deceased, the testator in the pleadings named.

The said George Samuel Watts and Henry Leycester, charge, that by indenture of lease and release, bearing date, respectively, the 15th and 16th days of June in the year 1801, and made between the said Samuel Whitbread, esq. of the one part, and the said George Samuel Watts, esq. and Henry Leycester, esq. of the other part; the said Samuel Whitbread, in consideration of 500l. of lawful British money to him the said Samuel Whitbread, paid by the said George Samuel Watts and Henry Leycester, he the said Samuel Whitbread did grant, release, and assure the messuages, lands, and premises in the said indentures of lease and release particularly mentioned and described, to hold unto and to the use of them the said George Samuel Watts and Henry Leycester, their heirs and assigns, subject to redemption by the said Samuel Whitbread, his heirs and assigns, upon payment of the said sum of 500l. and interest, at the rate of 5l. per cent. per ann. on the 16th day of December then next ensuing, and in manner therein mentioned, by which said indenture of release, the said Samuel Whitbread did covenant that he, his heirs, &c. would pay unto the said George

Samuel Watts and Henry Leycester, their executors, administrators, or assigns, the said principal sum of 500*l.* and interest as aforesaid, on the said 16th day of December then next ensuing, and long since past. And for further securing the payment of the said sum of 500*l.* and interest, the said Samuel Whitbread, in and by his bond or obligation in writing, bearing even date with the said indenture of release, became held and bound unto the said George Samuel Watts and Henry Leycester, their executors, administrators, and assigns, in the penal sum of 1000*l.* of like British money, conditioned for payment by the said Samuel Whitbread, his heirs, executors, and administrators, of the principal sum of 500*l.* and interest, at 5*l.* per cent. per ann. on the days and times, and in manner in the said indenture of release mentioned. The said George Samuel Watts and Henry Leycester further charge, that the whole of the said principal sum of 500*l.* with interest to be computed thereon, from the said 16th day of June, 1801, at such interest as aforesaid, is now due and owing to them, under and by virtue of the said indentures of lease and release, and bond; and that they or either of them, have no other security for the payment thereof;

	£	s.	d.
For principal money due as aforesaid * -	500	0	0
For interest thereof, at 5 <i>l.</i> per cent. per ann. to be computed thereon, from the said 16th day of June, 1801, to the day of being years, months, and days, the sum of			

And the said George Samuel Watts and Henry
• Leycester, crave leave to add to or alte this
their charge, as they shall be advised

CHARGE AND CLAIM

OF

LEGACY.

The Form of a Legatee's Charge for a Money
Legacy.

In Chancery.

Between Charles Pilgrim, Plaintiff;
and

John Hill, and others, Defendants.

The charge of the plaintiff, Charles Pilgrim, for a legacy of 300*l.* given and bequeathed to him in and by the last will and testament of Samuel Pilgrim, clerk, deceased, the testator in the pleadings named.

£ s. d.

The plaintiff charges, that under and by virtue of the last will and testament of the Rev. Samuel Pilgrim, late of St. Paul's Walden, Herts, clerk, deceased, there is due to him for a legacy of 300*l.* the principal sum of 300 0 0

And for interest thereon, from the 4th day of January, 1815, being one year after the death of the said testator, at the rate of 4*l.* per cent. per ann. the rate of interest directed by the decree made in this cause, to the day of being years, months, and days, the sum of

And the plaintiff craves leave to add to or alter this his charge, as he shall be advised.

CHARGES.

**The Form of a Charge by younger Children,
upon Money directed by a Decree to be raised
under a Marriage Settlement.**

In Chancery.

**Between John Fuller, esq. and Mary his wife, Selina
the wife of Harry Hampton, esq. George
Dake, esq. Thomas Dake, esq. both in-
fants, by their next friend, and Eliza-
beth Dake, late an infant, Plaintiffs;
and**

**Ann Pretty, widow, Mary Dake, widow,
John Dake, esq. and Henry Hampton,
esq. administrator, with the will annex-
ed of John Dake, esq. deceased,**

Defendants.

**The plaintiffs charge, as younger children of the
testator, John Dake, esq. upon the sum of 4200*l*.
directed to be raised under the marriage settle-
ment of the said John Dake, esq. deceased.**

£ s. d.

**The plaintiff, John Fuller, and Mary his wife,
charge to be due to them, in right of the
said Mary, as one of the five younger chil-
dren of the said John Dake, by virtue of
the marriage settlement, dated the 16th day**

£ s. 'd.

of December, 1813, in the decree in this cause mentioned, and by a bond executed by the said John Dake, and bearing even date herewith, in the 'penalty of 8400*l.* conditioned for his performance of the covenants, in the said settlement, one fifth part of the 4200*l.* by the decree made on the hearing of this cause, directed to be raised pursuant to the said settlement, for the benefit of the said Mary, and the other plaintiffs, the younger children, the principal sum of - - - 840 0 0

For interest thereof, from the 23d day of March, 1804, being one year after the death of the said John Dake, which happened on the 23d day of March, 1803, to the 23d day of March, 1812, being eight years, after the rate of 5*l.* per cent. per ann. the sum of - - - 336 0 0

For interest of the said 840*l.* from the said 23d day of April, 1812, to the day of the sum of

In part whereof the said plaintiffs John Fuller and Mary his wife admit to have been paid by the receiver, Mr. Harvey Combe, for her maintenance, from the death of her late father the said John Dake, the sum of 184 1 0

The plaintiff, Selena Hampton, also charges to be due to her, as one other of the five younger children of the said John Dake, by virtue of the said marriage-settlement and bond, before-mentioned, one other fifth part of the said 4200*l.* a like sum of 840 0 0

And for eight years' interest thereof, to the said 23d day of March, 1812, a like sum o 336 0 0

£ s. d.

And for interest of the said 840*l.* from the
23d day of March, 1812, to the
day of the sum of -

In part whereof the said plaintiff, Selena
Hampton, admits to have been paid for her
maintenance by the receiver, Harvey
Combe, 15*l.* 0*s.* 11*d.* and that pursuant to
an order of court of the 27th of March,
1813, the further sum of 13*l.* 11*s.* 8*d.* hath
been paid for her maintenance, out of cash
in the bank, making in all the sum of 164 12 7

The plaintiff, Elizabeth Dake, also charges to
be due to her, as one other of the five young-
er children of the said John Dake, by virtue
of the settlement and bond before-men-
tioned, one other fifth part of the said
4200*l.* a like sum of - - - 840 0 0

And for eight years' interest thereof, to the
23d day of March, 1812, a like sum of 336 0 0

And for interest of the said 840*l.* from the
said 23d day of March, 1812, to the
day of the sum of

In part whereof, the plaintiff, Elizabeth Dake,
admits to have been paid for her mainte-
nance, by the receiver, Mr. Harvey Combe,
15*l.* 3*s.* 8*d.* *And that pursuant to the said
order of the 27th of March, the further sum
of 58*l.* 16*s.* 4*d.* out of the cash in the bank,
hath been paid for her maintenance, mak-
ing in the whole - - 210 0 0

The plaintiff, George Dake, also charges to be
due to him, as one other of the five younger
children of the said John Dake, by virtue of
the settlement and bond before mentioned,
one other fifth part of the said 4200*l.* a
like sum of - - - 840 0 0

£ s. d.

And for eight years' interest thereof, to the
23d day of March, 1812, a like sum of 336 0 0

For interest of the said 840*l.* from the said 23d
day of March, 1812, to the day of
the sum of - -

In part whereof, the said plaintiff, George
Dake, admits to have been paid for his
maintenance, by the receiver, Mr. Harvey
Combe, 140*l.* 16*s.* 6*d.* also that pursuant to
the said order of the 27th of March, the
further sum of 69*l.* 3*s.* 6*d.* out of the cash in
the bank, hath been paid for his mainten-
ance, making in the whole the sum of

The plaintiff, Thomas Dake, also, charges to
be due to him as one other of the five
younger children of the said John Dake, by
virtue of the settlement and bond, before
mentioned, for the remaining fifth part of
the said 4200*l.* a like sum of 840 0 0

And for eight years' interest of the said 840*l.*
to the 23d day of March, 1812, a like sum
of - - - 336 0 0

For interest of the said 840*l.* from the said 23d
day of March, 1812, to the day of
the sum of

In part whereof the said plaintiff, Thomas
Dake, admits to have been paid for his
maintenance, by the receiver, Mr. Harvey
Combe 138*l.* 6*s.* And also that pursuant to
the said order of the 27th of March, the fur-
ther sum of 71*l.* 19*s.* 6*d.* out of cash in the
bank, hath been paid for his maintenance,
making in the whole the sum of 210 0 0

And the plaintiffs crave leave to add to or alter
this their charge as they shall be advised.

The Form of a Charge upon an Executor for the Testator's Personal Estate and Effects received by him, taken from the Schedules in the Defendants' Answer and Examination before the Master.

In Chancery.

Between Henry Parsons, and others, Plaintiffs;
and
Thomas Beckett, and others, Defendants.

The charge of the plaintiffs, for the personal estate and effects come to the hands of, and received by the defendant, Thomas Beckett, esq. as executor of the testator, John Lewis, esq. deceased.

1815.

12th March		£	s.	d.
	Cash found in the testator's dwelling house at the time of his death .	34	12	4
14th	Cash received of Thomas Webb, for corn sold - -	67	8	10
	Cash received by sale of 18,000 <i>l.</i>			
	4 <i>l.</i> per cent. annuities -	15,000	13	9
	Cash received of the chamber of Bristol, on account of Mr. Webb's charity - -	12	9	3
	Cash received of George Birch, esq. for wood sold to him at Hampstead *	7	14	3
20th Apr.	Cash received for eight loads of hay sold - -	46	0	0
	Cash received by sale of 2000 <i>l.</i> bank stock . - .	2820	0	0
25th .	Cash received on bond from John Machin, and interest to this date	257	18	0

		£	s	d.
3d May.	Cash received of Mr. Kenrick, on his note of hand, payable on demand	26	5	9
1816.	Cash received of Samuel Whitbread,			
24th June.	esq. due on mortgage, dated 15th and 16th June, 1809, and interest to 24th June 1816	525	1	4

And the plaintiffs crave leave to add to or alter this their charge, as they shall be advised.

The Form of a Charge for Rents and Profits received by an Executor and Devisee, in Trust.

In Chancery.

Between Henry Parsons, and others, Plaintiffs;
and
Thomas Beckett, esq. and others, Defts.

The plaintiffs' charge for rents and profits of the real estate of the testator, John Lewis, esq. deceased, received by the defendant, Thomas Beckett, the executor and devisee, in trust.

		£	s.	d.
1816.				
24th June.	Cash received of Thomas Williams, for half a year's rent of the messuage occupied by him in Hart street, due at Lady-day last	24	0	0
	Cash received of George Lewis, esq. for half a year's rent of the farm			

1816.

£ s. d.

and land, occupied by him at
Christchurch, Hants, due at Lady
day last

Cash received of Thomas Whetham,
esq. for half a year's rent of the
closes occupied by him, at Christ-
church aforesaid, due at Lady-
day last 16 0 0

Cash received of Samuel Hare, for
half a year's rent of the land oc-
cupied by him at Brachwood-
green, Herts, due at Lady-day last 56 0 0

Cash received of Richard Oakly, esq.
for half a year's rent of the messu-
age occupied by him in Kent-
street, due at Michaelmas last 24 0 0

Cash received of George Goodwin,
esq. for half a year's rent of the
farm and land, occupied by him at
Christ-church aforesaid, due at
Michaelmas last 150 0 0

Cash received of Thomas Whetham,
esq. for half a year's rent of the
closes occupied by him, at Christ-
church aforesaid, due at Michael-
mas last 16 0 0

Cash received of Samuel Hare, for
half a year's rent of the land occu-
pied by him at Brachwood green,
Herts, due at Michaelmas last 56 0 0

And the plaintiffs crave leave to add to or alter
this their charge, as they shall be advised.

The Form of a Charge upon an Executor, for the Personal Estate, outstanding and unsold.

In Chancery.

Between Henry Parsons and others, Plaintiffs;
and

Thomas Beckett, esq. and others, Defts.

The plaintiffs' charge of the personal estate, outstanding and unsold, and remaining in the possession of the defendant, Thomas Beckett, the executor.

A silver tea-kettle and lamp, the family arms engraved thereon.

A pair of large silver candlesticks.

A silver tea-pot and stand.

A dozen of large table spoons.

A silver coffee pot, the family arms engraved thereon.

A large silver waiter, the family arms engraved thereon.

A set of China, the family arms and crest burnt in.

A beautiful fur pelisse, trimmed with ermine.

Eight dozen of napkins.

Ten family pictures and portraits.

Six seals of the family arms, set in gold.

Eight servants' saddles and holsters with furniture, the family arms in silver affixed thereto.

And the plaintiffs crave leave to add to, or alter this their charge, as they shall be advised.

The Form of a Charge, claiming Interest upon a Balance remaining in an Executor's Hands after Payment of Debts, Legacies, &c.

In Chancery.

Between Harry Parsons, and others, Plaintiffs ;
and

Thomas Beckett, esq. and others, Defts.

The plaintiffs' charge of interest to be computed upon the balance remaining in the defendants' (the executors') hands, in respect of the testator's real and personal estate, after payment of all debts, legacies, and other allowances.

The plaintiffs charge, that in taking the account directed by the decree, it appears by the charges and discharges, and other proceedings in this cause, that after payment of all debts, legacies, and funeral expences, under the testator's will, there was on the 7th day of July, 1815, a balance remaining in the defendants, (the executors') hands, of 14,280*l.* 12*s.* 4*d.* arising by an improvident sale of all the testator's monies in the funds, and by calling in money placed out at interest, and other part of the testator's personal estate.

The plaintiffs therefore charge, and claim an allowance of interest upon the sum or balance of 14,280*l.* 12*s.* 4*d.* to be computed from the said 7th day of July, 1815, at the rate of 5*l.* per cent. per ann. to the day of
being years, • months, and
 days, the sum of

And the plaintiffs crave leave to add to, or alter this their charge as they shall be advised.

DISCHARGES.

The Form of a Discharge for Payments made by
an Executor out of the Personal Estate of the
Testator.

In Chancery.

Between Henry Parsons, and others, Plaintiffs;
and

Thomas Beckett, and others, Defendants.

The discharge of the said defendant, Thomas Beckett,
for payments made out of the personal estate of the
said testator. *

1816.		£	s.	d.
14th Jan.	Cash paid Mr. Abbott, the under- taker, his bill for funeral ex- pences - - -	78	12	9
	Cash paid—the fee due to the clergyman attending the funeral	2	2	0
19th.	Cash paid for one year's wages to Ann Cradock, due at Christmas last - - -	10	10	0
	Cash paid the proctor for probate of the testator's will - - -	76	14	8
21st.	Cash paid for poor's rate due at Christmas last - - -	3	12	6
	Cash paid Jemmy Hook, the coach- man, for half a year's wages - -	9	9	0
24th.	Cash paid Mr. Simon Tubbs, the fishmonger, his bill - - -	18	12	4

	£	s.	d.
Cash paid Mr. Thomas Osborn, a taylor's bill, for clothes -	28	13	3
Cash paid Mr. Joseph Pedder, a carpenter's bill, for work done	8	18	2
Cash paid Mr. Abbot, the auc- tioneer, for sale of household goods - -	76	12	4
Cash paid Mr. Clerk, his bill for coals - -	13	7	3
Cash paid Mr. Willshire, the at- torney, for business done	20	14	6
Cash paid Mr. Catlin, the baker, his bill for bread, &c. -	3	6	1
Cash paid Mr. Whitney, the butcher, his bill -	14	6	2
And the said defendant craves leave to add to, or alter this his discharge as he shall be advised. .			

**The Form of a Discharge by an Executor for
Payments made out of the Rents and Profits of
a real Estate.**

In Chancery.

**Between Henry Parsons, and others, Plaintiffs;
and .**

Thomas Beckett, esq. and others, Defts.

**The discharge of the defendant, Thomas Beckett,
as to the charge of rents and profits of the
real estate received by him.**

1815.

**10th April. Cash paid for half a year's land-
tax of the messuage, in the oc-**

£ s. d.

	£	s.	d.
cupation of Mr. Richard Oakley in Kent-street, due at Lady-day last	2	3	2
Cash paid for half a year's land- tax of the farm and lands in the occupation of George Lewis, esq. at Christchurch, Hants, due at Lady-day last	-	7	18 2
Cash paid for half a year's land- tax of the closes in the occupation of Thomas Whetham, esq. at Christchurch aforesaid, due at Lady-day last	-	1	14 2
Cash paid for half a year's land- tax of the farm and land in the occupation of Samuel Hare, at Brachwood Green, due at Lady- day last	-	5	12 4
14th May. Cash paid for chief rent of the above premises	-	0	5 0
10th Dec. Cash paid for half a year's land- tax of the messuage in the occu- pation of Mr. Richard Oakley, due at Michaelmas last	-	2	3 2
Cash paid for half a year's land-tax of the farm and lands in the occu- pation of George Lewis, esq. due at Michaelmas last	-	7	18 2
Cash paid for half a year's land-tax of the closes in the occupation of Thomas Whetham, esq. due at Michaelmas last	-	1	14 2
Cash paid for half a year's land-tax of the farm and land in the occu- pation of Samuel Hare, due at Michaelmas last	-	5	12 4

£ s. d.

Cash paid for repairs done upon
the house and barns in the occupa-
tion of Samuel Hare 11 14 6

And the said defendant craves leave to add
to, or alter this his discharge as he shall
be advised.

**The Form of a Discharge for Payments made on
Account of a Legacy out of the Personal Es-
tate to a Charge brought in by the Legatee.**

In Chancery.

Between Elizabeth Field, Plaintiff;

and

Pitman Scandarett, and others, Defendants.

The defendants' discharge to the plaintiff's charge
for her legacy and interest, and arrear of annuity.

The defendants crave an allowance of the several sums
of money paid or allowed to the plaintiff by the de-
fendant Pitman Scandarett, in discharge of her legacy,
and towards the growing payment of her said an-
nuity, as follows:

		£	s.	d.
1815.				
12th Sept.	Cash paid her on account	-	5	0 0
3d Nov.	Cash paid her on account	-	10	10 0
	Cash paid her by John Martin, out of the hay sold	-	12	0 0
1816.	Cash paid her by household goods			
3d Jan.	of the testator sold to her		24	7 1
	Cash paid her by rent of the house and garden occupied by her		10	13 8

DISCHARGES.

		£	s.	d.
5th March.	Cash paid her by tithes received by her of Messrs. Freeman and Parsons		2	15 0
1816.	Cash paid to her by interest re-			
10th Jan.	ceived from her son, Mr. Machin, to Lady-day 1815		46	5 0
	The defendants also crave an al- lowance for the money paid her by Mr. Dionysius Bradley, for the rents and profits of the pre- mises, at Burley, by the order of the defendant, Scandarett, paid pursuant to an order in the cause, dated the 3d day of December, 1815, amounting to		66	14 0

And the defendants crave leave to add to, or
alter this their discharge as they shall be
advised.

DEMURRER.

Words of Course preboding a Demurrer.

The demurrer of George Venables, defendant, to the bill of complaint of Hugh Leycester, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the complainant's bill of complaint mentioned to be true, in such manner and form, as the same is therein and thereby set forth and alleged, doth demur to the said bill, and for cause of demurrer sheweth, That, &c.

The formulary Conclusion to a Demurrer.

Wherefore this defendant doth demur to the said bill of complaint, and to all the matters and things therein contained, and humbly demands the judgment of this court, whether he shall be compelled to make any further or other answer thereto. And prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

Where the Demurrer is to Part of the Bill or to the Relief.

This defendant, by protestation, &c. to be true in such manner and form, as the same are therein set forth, as

to so much and such part of the said bill, as seeks, &c. this defendant doth demur, and for cause of demurrer, sheweth, that, &c.

Conclusion.

Wherefore, and for divers other errors and imperfections, and good causes of demurrer in the said bill contained, this defendant doth demur to such part and so much of the said bill. And humbly prays the judgment, *as before*.

Words of Course preceding and concluding a Demurrer, to Part of a Bill, a Plea to other Part, and an Answer to the Residue of a Bill.

The joint and several demurrer of S. N. and E. his wife to part, and the plea of the said S. N. to other part. And the joint and several answer of the said S. N. and E. his wife, to the residue of the bill of complaint of M. B. and J. M. and S. his wife, complainants.

These defendants S. N. and E. his wife, by protestation, not confessing or denying, &c. *as before*, as to so much of the said bill as seeks, &c. these defendants do demur thereto; and for cause of demurrer shew, that, &c. Wherefore, and for which reason, and for divers causes, these defendants do demur to so much of the said bill as aforesaid; and humbly pray the judgment of this court, whether they shall make any further or other answer thereto; and as to so much of the said bill as seeks, &c. This defendant S. N. doth plead thereto, and for plea, this defendant saith, that, &c. all which matters

and things this defendant doth aver, and is ready to prove, as this court shall direct. And doth plead the same in bar to so much of the said bill, as for that purpose is hereinbefore mentioned, and craves the judgment of this court, whether he shall make any further or other answer thereto; and as to so much of the said bill as these defendants have not before respectively demurred or pleaded unto, these defendants in no sort waiving the benefit of their said demurrer and plea, or either of them, but wholly relying and insisting thereon; these defendants, for answer to the residue of the said complainant's said bill, or so much thereof as these defendants are advised is material or necessary for them or either of them to make answer unto, these defendants severally answer and say, that, &c.

Precedent of a special Demurrer and Answer.

Demurrer of Mary Helsham, an infant, by James Boys, her guardian, and of the said James Boys, two of the defendants, to part; and their joint and several answer to the residue of the bill of complaint of John Kelsall, complainant.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the complainant's said bill of complaint contained to be true, in such manner as the same are therein set forth, as to so much of the said bill as seeks to compel these defendants to deliver up to the complainant full and quiet possession of all or any of the lands, tenements, and hereditaments, in the said bill mentioned, or any part thereof; or which seeks to compel these defendants to come to an account with the said complainant for the rents, issues, and profits, received out of the several estates in the complainant's said bill mentioned, or any

or either of them, in the manner by the said bill prayed, these defendants do demur thereto, and for cause of demurrer shew, that it doth not appear by any matter or thing charged or alledged by the complainant's said bill, that he the said complainant is in any ways hindered or disabled from trying and determining at law the right which he pretends to have to the said lands and premises by his bill, or that the said complainant stands in need of, or is in any ways intitled to the aid of this honourable court, for the purpose aforesaid; and for further cause of demurrer, these defendants shew, that the account prayed by the complainant's said bill, doth extend to the rents, issues, and profits that were received in the life-time, and which are pretended to belong to the complainant's pretended father in the bill named, as well as to such rents, issues, and profits, as have been received since the time of the death of the complainant's said pretended father, without making any distinction of the one account from the other, by setting forth the time of the death of the complainant's pretended father or otherwise, and without bringing the proper representatives of the complainant's said pretended father, before the court, by making such representative a party complainant or defendant to the said bill, although no other person, but such representative alone, can now be intitled to the rents, issues, and profits by the said bill pretended to have belonged to the said complainant's said pretended father; and for further cause of demurrer to such part of the said complainant's said bill as these defendants have not before demurred unto and not hereinafter answered, these defendants shew that the bill is not only exhibited against these defendants, but also against Ann Salkeld, widow, and Nathaniel Warren, therein named: and in the said bill is contained several and distinct charges, for several and distinct matters, against several and distinct defendants, which have not any relation or reference the one to the other,

whereby the said bill is drawn to an unnecessary length of fifty sheets of paper, and these defendants must be put to unnecessary charge and vexation, if they should be compelled to answer the whole bill; and if this suit should go on, the pleadings or proceedings would be intricate and perplexed, and these defendants would be put to great charges in taking copies of such pleadings and proceedings, for which reason these defendants do demur to so much and such part of the said bill as aforesaid; and these defendants in no sort waiving their said demurrer, but for corroborating the same by way of answer to the residue of the said bill, do, each severally answering for himself and herself, severally say, that they do not know, nor can they form any belief, nor have they heard, save by the bill, and as by the complainant is pretended, or by his friends or agents has lately been given out, that he the said complainant, is the only son and heir of Roger Kelsall the younger, in the bill named, or nephew or heir of Roger Kelsall the elder, in the bill also named. And these defendants do severally deny all combination and confederacy in the said bill charged. Without that, that, &c.

John Brown.

The above demurrer and answer was perused and approved by Mr. Yorke, afterwards Lord Hardwicke, and 13th December 1732, was argued and allowed, but the plaintiff was to be at liberty to try his title at law.

DEPOSITIONS.

Words of Course preceding Depositions of Witnesses examined in Town.

Depositions of Witnesses to prove deeds, &c.

Witnesses examined by Thomas Pierce, esq.
examiner in the High Court of Chancery,
in a cause now depending and at issue in
the said court, wherein William Crew, esq.
is complainant, and Henry Troutbeck, esq.
is defendant, on the part and behalf of the
said defendant. *

John Delves, gentleman, aged about forty-three years, clerk or agent to Mr. Dutton, in Boswell-court, near Lincoln's Inn, in the county of Middlesex, being produced as a witness, on the part and behalf of Henry Troutbeck, the defendant, in the title of the interrogatories named, was on the eighteenth day of January, in the year one thousand eight hundred and sixteen, shewn in person, at the seat of Mr. Wainewright, who is the clerk that deals for the complainant in this cause, by Mr. Evans, one of the sworn clerks in my office, who then also left a note of the name, title and place of abode of the said deponent, at the seat aforesaid, and afterwards on the same day and year, the said deponent being sworn and examined, deposeth and saith,

To the third interrogatory, that he hath looked upon the paper writing now produced by him, at this the time of his examination, marked with the letter D, purporting to be a copy of the record of a judgment of his majesty's court of Common Pleas at Westminster, and

saith that he did on the seventeenth day of this instant January, carefully compare and examine the said produced paper writing, with the record of the judgment of which the same purports to be a copy, in the treasury of the said court of Common Pleas at Westminster, with the assistance of the proper clerk, or officer there, and that the same is a true and exact copy of such record, to the best of this deponent's observation and belief, which is all that he deposeth to this interrogatory.

John Warburton, of Middlewich, in the county of Chester, gentleman, aged about fifty-nine years, now residing at the house of the defendant, Henry Troutbeck, in Berkeley-square, Middlesex, being produced as a witness, on the part and behalf of Henry Troutbeck, the defendant, in the title of the interrogatory named, was on the twentieth day of January in the year one thousand eight hundred and sixteen, shewn in person, at the seat of Mr. Wainwright, who is the clerk that deals for the complainants in this cause, by Mr. Evans, one of the sworn clerks in my office, who then left a note of the name, title, and place of abode of the said deponent, at the seat aforesaid, and afterwards on the same day and year, the said deponent being sworn and examined, deposeth and saith,

To the second interrogatory, that he hath looked upon two parchment indentures, purporting indentures of lease and release, marked respectively with the letters A. and B. dated respectively the nineteenth and twentieth days of August, one thousand eight hundred and five, and upon a paper writing, purporting a bond marked with the letter C. bearing date the twenty-second day of November, one thousand eight hundred and eight, all now produced and shewn to him at this the time of his examination; and that he was present as a witness, and did see the said produced deeds and bond respectively signed, sealed and delivered by Henry Troutbeck, esq. this deponent's brother in law, and John Troutbeck, esq.

the eldest son of the said Henry Troutbeck therein respectively named, as their acts and deeds respectively, on or about the days they respectively bear date, as this deponent believes as to the times, and also saw them the said Henry Troutbeck and John Troutbeck sign the receipt for one thousand and thirty pounds, indorsed on the said deed marked B. as the consideration thereof; and that as an evidence of his so seeing the said indentures and bond so executed, and the said receipt so signed, as aforesaid, &c. he did indorse and set his name as a witness thereon and thereto, as it now appears to be thereon and thereto indorsed and set; and saith, that the name John Warburton, indorsed on the said deed, marked A. as one of the witnesses to the sealing and delivery thereof, and indorsed in two places on the said deed marked B. as one of the witnesses to the sealing and delivery thereof, and as one of the witnesses to the said receipt indorsed thereon, and set as one of the witnesses to the said bond, is of the hand-writing of him this deponent, and that the name T. Dutton, indorsed on the said deeds as the other witness thereto respectively, is of the hand-writing of Mr. Thomas Dutton, who was present as a witness at the execution of them, and is now living as this deponent believes; and that the name and words John Vernon, drawer at the Feathers Tavern in Chester, set as the other witness to the said bond, is of the hand-writing of John Vernon, who was then a drawer at the said tavern, and was present as a witness when the said bond was executed, which is all that he deposeth to this interrogatory.

Words of Course preceding Depositions of Witnesses taken by Commission.

Depositions of witnesses produced, sworn, and examined on Monday, the fiftēenth day of July, in the fiftyth-seventh year of King George the third, and in the year 1816, at the house of Mary Tomlinson, called or known by the name of the White Lion, in the market, in the city of Chester, by virtue of a commission issuing out of the High Court of Chancery, to us Gilbert Venables and George Manwaring, and others, directed, for the examination of witnesses in a cause there depending and at issue between Richard Grosvenor, complainant, and George Leycester, defendant: we the acting commissioners, under the said commission, and also the respective clerks by us employed in taking, writing, transcribing and ingrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof, and as thereby directed, on the part and behalf of the complainant Richard Grosvenor.

John Grosvenor, of Eaton, in the county palatine of Chester, esq. aged sixty years, or thereabouts, a witness produced, sworn, and examined on the part and behalf of the complainant Richard Grosvenor, deposeth and saith as follows:

To the first interrogatory, this deponent saith, &c.

Lastly, to the last interrogatory, this deponent saith, that, &c.

ELECTION.

Form of an Election to proceed in the Court of
Chancery.

In Chancery.

Between John Kelsall,
and

Mary Helsam,

Plaintiff;

Defendant.

In pursuance of an order made in this cause, bearing date the third day of this instant February, the plaintiff doth hereby make his election to proceed in this court. Dated the sixteenth day of February one thousand seven hundred and thirty-one.

Richard Handley,
Clerk for Plaintiff.

Form of a Special Election to proceed at Law for Possession of the Premises in question, and in the Court of Chancery for a Discovery and Account.

In Chancery.

Between John King,
and

John Brewer,

Plaintiff;

Defendant.

In pursuance of an order made in this cause, dated the 12th day of June last, the plaintiff doth hereby make his election to proceed at law for recovery of the

possession of the premises in question, And in this court, for a discovery and production of the deeds and writings, and for an account of the rents and profits thereof. Dated the fifth day of July, one thousand seven hundred and fifty-five.

Joseph Blissett,
Clerk for plaintiff.

The course of practice is, after the defendant has put in his answer, to apply by motion of course, (a) for an order, which suggesting that the plaintiff prosecutes the defendant both at law, and in this court, for one and the same matter, whereby he is doubly vexed, directs the plaintiff, his attorney at law and clerk in court having notice thereof, within eight days after such notice to make his election in which court he will proceed. And if the plaintiff should elect to proceed in this court, the plaintiff's proceedings at law are thereby stayed by injunction; but in default of such election by the time aforesaid, or if the plaintiff should elect to proceed at law, then the plaintiff's bill is from thenceforth to stand dismissed with costs, to be taxed by the master to whom the order refers.

The order must be drawn up, passed and entered, at the register office, and served upon the plaintiff's clerk in court; and he must within eight days, the time limited by the order, make his election where he will proceed. The plaintiff's clerk in court upon receiving instructions from the solicitor for the plaintiff, will ingross and sign the plaintiff's election, in which court he will proceed, which must be filed by the clerk in court in the report office: and the defendant's solicitor, after the expiration of the eight days, must search at the report office, and take an office copy of the election. If the plaintiff should elect to

(a) 1 Ves. J. 91.

proceed in this court, the order and the office copy of the plaintiff's election must be left with the defendant's clerk in court, with instructions to make out and seal an injunction to restrain plaintiff's proceeding at law, and which, in strictness, should be personally served upon the plaintiff and his attorney, by delivering to, and leaving with each of them respectively, a true copy of the writ, shewing the injunction under seal, at the time of such respective service; but if upon searching, the election is not filed, or if it appears by the election that the plaintiff will proceed at law, the bill in this court stands dismissed of course, and the defendant's solicitor must make out his bill of costs in this court, which with the order and the office copy of the plaintiff's election are to be left at the master's office referred to by the order, the usual warrants on leaving the bill of costs, and to proceed and tax, must be taken out, served and attended, and the master will make a certificate of the taxation, which the solicitor must file at the report office, and the payment of the costs may be enforced by subpœna, to be obtained by leaving a præcipe in the following form at the subpœna office in the Rolls yard, producing the office copy of the report shewing the sum allowed by the master.

“Subpœna George Leigh to pay fifteen pounds costs to Sir Thomas Foulhurst, or bearer,

“Wilbraham, solicitor.”

The sum at which the costs are taxed, is specifically set forth in the body, and the label of the subpœna, and are always made payable to the party or *bearer*. The service of the subpœna must be *personal*, and an *actual demand* of the costs made, at the same time, or if the party cannot be found, a service upon the clerk in court, or otherwise, (a) may be substituted by order

to be obtained upon motion, or petition, supported by an affidavit that the party cannot be found; and upon neglect or refusal to pay the costs, the ordinary process of contempt will be issued by the clerk in court, but the affidavit of service of the subpoena must be *previously* filed. (a)

If a plaintiff sues at the same time, for the same cause, at law and in equity, the defendant cannot plead the pendency of the suit at law, in bar of the suit in equity, (b) though the practice was formerly otherwise. (c) If he shall elect to proceed at law, and should fail there, the dismissal will be no bar to his bringing a new bill; (d) but it has been held that if the suit be for land, the complainant may elect to proceed at law, for recovery of the possession, and in a court of equity for an account of rents and profits. The reason assigned is, that at law he can only recover for mesne profits from the entry laid in the ejectments: (e) if, however, it can be shewn, that the plaintiff can obtain full and complete relief in a court of law, a court of equity will put him to his election; but where the matters for which a plaintiff is proceeding against a defendant in equity and at law are distinct and unconnected, it should seem the court would refer it to a master, to inquire if the proceedings in both courts were the same. And if an order has been made to elect; upon an application to discharge the order, as having been obtained on a false suggestion: the course is a reference to inquire, if the proceedings are for and touching the same matters, and for the master to state his opinion thereon. (g) A plaintiff suing in this court, and in a *foreign* court of

(a) 8 Ves. 357.

(b) 3 P. Wm. 90.

(c) Ord. Canc. Bea. Ed. 11. 177.

(d) Redesd. Tr. Ch. Pl. 204. 2 Vern. 32.

(e) 1 Vern. 105.

(g) Dick. 558. 1 Ves. and Bea. 381. and the case cited.

law, after election made in the latter to proceed *there*, will be put to his election *here*. (a) In some cases liberty is given to make a *special election*; to proceed in a court of equity, for the rent in question, accrued before defendant came into possession, and at law, for rent accrued in defendant's own name (b) And to prevent an administrator giving undue preference, by confessing judgment, a plaintiff in equity will be allowed to proceed at law to judgment, with a stay of execution, and in equity for a discovery of assets. (c) A mortgagee may proceed in equity and at law at the same time; (d) nor will a court of equity interpose, but upon bringing in the money. (e) It should seem that an infant would be allowed to retain his bill for the mesne profits, after an election to proceed at law. (g) Where plaintiff had proceeded in equity and at law, and after an order for putting him to his election, he had proceeded in equity; upon an application by the receiver for liberty to distrain for the rent; the court doubted whether the plaintiff ought to have the benefit of the order to elect, and refused the application, without an undertaking to proceed *in equity only*; but Lord Eldon observed that the receiver might have come in as an indifferent person, and have applied to restrain the plaintiff's proceedings at law. (h)

In a creditor's suit, after electing to proceed at law: upon the application of the creditor, his election has been discharged, and the court has allowed him to come in under the decree. (i)

(a) 1 Coop. Ch. Rep. 294.

(b) Dick. 182.

(c) 2 Atk. 119.

(d) 1 Ves. 431. 2 Atk. 342. 2 Dougl. 417.

(e) 2 Anstr. 497.

(g) 3 Atk. 129.

(h) 1 Coop. Cli. Rep. 107.

(i) Dick. 144.

EXAMINATION.

Words of Course preceding an Examination of a Defendant in a Master's Office, to Interrogatories settled by a Master, pursuant to a Decree.

In Chancery.

The answer and examination of John Delves, esq. defendant, to interrogatories exhibited on behalf of William Dutton, complainant, for the examination of the said defendant, before Sir John Simeon, bart. one of the masters of this court, to whom this cause stands referred pursuant to the decree made on the hearing of this cause, dated the 20th June 1816.

To the first interrogatory, this examination^{not} saith that,
&c.

EXCEPTIONS TO ANSWERS.

EXCEPTIONS to *answers* are drawn, or perused, and signed by counsel, and engrossed upon unstamped (a) paper, and left by the plaintiff's solicitor *with his clerk in court*, to be delivered over by him to the defendant's clerk in court, marking thereon the day of the date of the delivery, which is termed *filing exceptions*. Exceptions to reports are never filed with the clerk in court.

To an answer filed in term the plaintiff must file his exceptions the same term, or within eight days next after term. To an answer filed in the vacation, the plaintiff has the eight first days in the beginning of the next term, to file his exceptions; after that time exceptions cannot be filed but by consent of the defendant's clerk in court to receive them, or by order obtained upon petition to the master of the rolls, or on motion to file exceptions *nunc pro tunc*. Lord Camden settled the practice, that the party has two terms, and the vacation before the third term, to file exceptions *nunc pro tunc*, as where an answer is filed in Trinity vacation, the party has the next Michaelmas and Hilary terms, and the whole of the Hilary vacation following, to apply for an order to file exceptions *nunc pro tunc*. (b) This seems to apply to a bill for relief. In a suit for a discovery merely, the plaintiff is intitled only to the first eight days to file his exceptions; as where an answer was filed in the vacation, the defendant after the eight days in the following term applied by motion for the costs

(a) The stamp of 5s. relates to exceptions filed in court, to reports.

(b) 6 Ves. 823.

of the discovery, the plaintiff contended he was intitled as of course to two terms to except, but Lord Eldon made the order, observing that two terms would be a very unreasonable time. (a)

Where an answer is reported impertinent, the time for excepting is to be computed from the date of the master's report. (b)

Additional exceptions are sometimes filed by special order. (c)

An amendment of the bill merely by adding a defendant, introducing no new matter, the amendment being made previously to taking the exceptions to the answer, is regular; an application to discharge an order referring exceptions, on that ground, as irregular was refused. (d)

Exceptions taken to an answer, may upon a clear mistake be amended. (e)

Where the plaintiff, upon the submission of the defendant, obtained the usual order to amend, and that the defendant should answer the exceptions and amendments together, he cannot take a new exception as to any matter in the original bill; he must go before the master upon the old exceptions, as they apply to the original bill; and upon new exceptions as to the new matter introduced by the amendment; which, however, the master may consider, with reference to such parts of the original bill as apply to them. And if after a motion to amend the bill, and that the exceptions and amendments may be answered together; if the answer to the exceptions be filed before the order to amend is drawn up, it is regular. (g) After exceptions are taken, and the answer reported insufficient, and the plaintiff not moving to amend, the defendant answers the exceptions; after that answer comes in, the plaintiff cannot add to the number of the old exceptions;

(a) 5 Ves. 86.

(b) 1 Meriv. Rep. 1.

(c) Pechell v. Lord Weymouth, Hil. 1775. (d) 9 Ves. 315.

(e) 10 Ves. 284.

11 Ves. 578. 570.

but if not satisfied, must contest with the defendant, whether he has answered the old exceptions: it is usual and even necessary to refer the answer back upon the old exceptions. (a)

The effect of taking exceptions pending a demurrer, to discovery, is to admit the demurrer; however exceptions have been permitted to be withdrawn upon payment of costs, without prejudice. (b)

The following form of exceptions taken to an insufficient answer, may convey to the young practitioner an idea of exceptions in general.

In Chancery.

Between Elizabeth Drax, Plaintiff;

and

Jocelyn Pickard, esq. and others, Defts.

EXCEPTIONS taken by the complainant to the insufficient answer of the defendant Roger Pickard.

First Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, remembrance, information, and belief, set forth and discovered, whether the said complainant is, or is not intitled to the wood called Beer-wood, in the said bill, mentioned in manner therein set forth, or otherwise, and how otherwise, and what are the number of acres thereof, and the nature and species of wood therein, and in every part thereof, growing, and by what name or names the several divisions, or parts, that constitute the same wood or woods, are or have been called or known.

Second Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, remembrance, information and belief, set forth, and discovered, in

(a) 11 Ves. 570, 5, 8.

(b) 13 Ves. 83.

what part or parts of the said woods, he or the other defendant, Jocelyn Pickard, claim any and what right of common of pasture, and for what cattle, by number and species, and in respect of what part or parts of their, or either of their lands, tenements, or hereditaments, by the name or names, situation, or description of the same respectively, and what is or are the quality, quantity, and number of acres of such lands, in respect whereof he, or the said Jocelyn Pickard, claim such right, and how, they or either of them, make out such claim, and whether under any and what verdict or verdicts, record or records, and where such lands lie.

Third Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, remembrance, information, and belief, set forth and discovered, the most ancient and all other subsequent name and names that all or any part of the said Jocelyn Pickard's, or the said Roger Pickard's lands have been called or known by, and are called, or respectively known by, and by what name or names, and other descriptions, the same and every part thereof have been, and are now leased or demised, and to whom they are now leased and demised, and for what term or terms, and what is and are the annual rents or values of such lands respectively; in right of which they the said Jocelyn Pickard and Roger Pickard, or either of them, set up or claim such common of pasture, as in the complainant's bill is suggested to be claimed by them.

Fourth Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, remembrance, information, and belief, set forth and discovered, whether the said lands of them the said Jocelyn Pickard and Roger Pickard, or either of them, now united or held toge-

ther, have or have not heretofore been held separately, and by what names and other descriptions, and when they were so let or held separately, and at what respective yearly and other rents, and by whom respectively occupied, and when united and blended together.

Fifth Exception.

For that the said defendant hath not, in and by his said answer, set forth and discovered, to the best of his knowledge, remembrance, information, and belief, whether they the said defendants, Jocelyn Pickard and Roger Pickard, or one of them, have or hath not assented to the said agreement, and when, and by what means, and why, and for what reason, and for how long, and why such agreement was entered into, and what was then the real value of such right of pasture, and by whom the same was valued, and for whom, and by whose direction, consent and approbation.

Sixth Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, remembrance, information, and belief, set forth and discovered, whether the said woods are or are not improved and made better for pasture, and of more value now than when the said agreement was made, and why, and for what reason.

Seventh Exception.

For that the said defendant hath not, in and by his said answer, to the best of his knowledge, information, remembrance, and belief, set forth and discovered, what was the value of the said pasturage to the tenant of such part of Bloxworth lands, who claimed the same when the said agreement in the bill mentioned was made; and whether the value thereof was then for that purpose, adjusted or settled, and by whom, and on whose behalf, or with whose knowledge, consent, or approbation, and

what the same is worth now, and why the value thereof is increased, if so it is.

In all which particulars the said complainant is advised, that the said answer of the said defendant is evasive and insufficient, and ought to be amended, and humbly prays the same may be amended accordingly.

Thomas Sewell.

The Form of an additional or further Exception, taken to an Answer, pursuant to an Order for that Purpose.

In Chancery.

Between Samuel Pechell, Nicholas Bonfoy, Anthony Chamier, and Charles Scrase, esqrs executors of William Janssen, esq. deceased, brother and sole executor of sir Abraham Janssen, bart. - Plaintiffs;
and

The right honourable Thomas, lord viscount Weymouth, Defendant.

An additional or further exception, taken by the said complainants, to the answer of the defendant to the bill of complaint of the said complainant, by virtue of an order, bearing date the 21st day of February, 1775.

For that the said defendant hath not, in and by his said answer, according to the best and utmost of his knowledge, remembrance, and belief, answered and set forth, whether the said sir Abraham Janssen, in the complainant's bill named did not, at or about the time in the complainant's bill mentioned, or when else, contract or agree with him the said defendant, for the purchase of

the annuity, or clear yearly sum of £600, for the sum of £4500, as in the said complainant's bill is also mentioned, or for any other, and what sum of money, or whether the same was not actually and *bond fide* advanced and paid to him the said defendant, by the said sir Abraham Janssen, for the purchase thereof; or whether he the said defendant, for securing the payment of the said annuity, or yearly sum of £600, pursuant to the said agreement, did not duly execute and give to the said sir Abraham Janssen, such bond of such date, in such penalty, and with such condition as in the said complainant's bill is mentioned and set forth, or any other and what bond, of what date, and in what penalty, and with what condition, or whether for the better and more effectual securing the payment of the said annuity, or yearly rent of £600, to the said sir Abraham Janssen, in manner therein mentioned, such indentures of lease and release, of such respective dates, and to such purport or effect respectively, as in the said complainant's bill also set forth, were not duly made and executed, by him the said defendant, and the rest of the parties thereto, or some and which of them, or whether the several manors, messuages, lands, tenements, and hereditaments therein, and in the said complainant's bill mentioned, were not thereby duly conveyed unto, and to the use of the said complainant, Charles Scrase, and his heirs, for and during his, the said defendant's life, in trust for securing the payment of the said annuity in the first place, and then for the benefit of him the said defendant, in manner in the said complainant's bill mentioned, or how otherwise.

In all, which particulars the said defendant's answer is also evasive and insufficient, and therefore the complainants except thereto; and pray that the said defendant may amend the same.

William Ainge

EXCEPTIONS TO REPORTS.

EXCEPTIONS taken to a master's report are filed with the register, and not in the six clerks office. They must be engrossed on five shillings stamp paper, and left with Mr. Bird, at the register-office, and a deposit of 5*l.* paid to him, for which he will give a certificate, written upon unstamped paper, in the following form ;

*“ Between Thomas Harwood, esq. and others,
 “ Plaintiffs; and Thomas Crawley, John
 “ Swaine, and others, Defendants.*

*“ The plaintiffs have this 26th day of May, 1816,
 “ filed an exception to Mr. Stephen's report made
 “ in this cause, dated the 18th day of April last,
 “ and deposited five pounds according to the rule.
 “ Jacob Crofts,
 “ Deputy Register.”*

A fee of one shilling is paid for the certificate, which must be annexed to a petition and presented to the lord chancellor, for an order to set down the exceptions to be argued, and this should be done *immediately*; the mere act of filing exceptions(a) will not prevent the report being confirmed, nor the register from certifying, in writing, upon the order *nisi* to confirm the report, that “ there is not any order entered with the register, “ whereby cause is shewn to the contrary thereof,” to the day on which the order absolute is moved, and which is always the day of the date of the certificate.

(a) 4 Ves. 617. Dickens, 604. 2 Cox Rep. 169.

And the order for setting down the exceptions must be drawn up, passed, entered, and served upon the proper clerk in court, with all convenient dispatch. But on payment of the order for confirming the report, and of the application to discharge that order, an excepting party has been let in to argue his exceptions. (a) Where an answer is reported insufficient, unless vigilance is used, the costs may be recovered by subpoena, before the exceptions to the report are filed and set down.

Exceptions to a report of impertinence, may be taken after an order to expunge, until that order has been acted upon: nor is it necessary to take objections before the master previous to excepting to a report of impertinence. (b) After the impertinent matter has been expunged from the record, it is too late to except. (c)

Exceptions to a master's report, if it can conveniently be done, should state some matter of exception: where an order had been made, referring an examination, taken under the directions in a decree for examining parties, back to the master, to see whether it was sufficient or not; the master under the reference, reported that it was sufficient; an exception was taken to the report, stating *generally* that the master had reported the examination sufficient, whereas he ought to have reported it insufficient; the court held the exception to be *regular*, though not to be encouraged, and having overruled the exception, therefore gave costs beyond the deposit. (d)

But under circumstances, a defendant has been at liberty to take a general exception, without setting out the particulars in which he alledged the report to be erroneous: as where upon a reference of an answer for impertinence, the matter reported impertinent, occupied

(a) 2 Cox Rep. 169.

(b) 1 Meriv. 135.

(c) 1 P. Wms. 181.

(d) 12 Ves. 166.

3000 folios. (i) And if one general exception is taken to a report, including several distinct matters, and the report appears right in any one instance, the exception must be overruled. (a) •

An exception to a master's certificate of allowing interrogatories settled by him, does not seem to be the regular course for taking the judgment of the court upon the matter of the interrogatories: Lord Eldon determined, upon very serious consideration, and special argument of counsel, that the interrogatories should be put to the party, who answers as much or as little as he is advised to; and upon a reference to the master as to the sufficiency of the examination, the exception should be taken to the master's certificate, of the sufficiency or insufficiency of the examination, and the practice seems to be so settled. (b)

Exceptions do not lie to reports in matters *ex parte*. A report, upon a reference under the 7th Anne, as to an infant trustee, cannot regularly be excepted to. (c) So a report of maintenance or guardian for infants, (d) and the like. On a reference, to inquire if a suit brought in the name of an infant was necessary; in the latter case, the court held that the objection should be taken on the application to confirm the report; (e) in other cases it may be by petition, stating the report, and objection, and praying a reference back to the master to review his report. (g) Nor do exceptions lie to reports or certificates of taxing of costs only, the course is to apply by petition for leave to except. (h)

Nor is defendant obliged to take exceptions to a mas-

(i) 1 Meriv. Rep. 135.

(a) 1 Cox Rep. 249.

(b) 6 Ves. 459. 16 Ves. 243. Dick. 548. see *infra*.

(c) Dick. 395.

(d) 1 Br. C. C. 577.

(e) 2 Cox Rep. 285.

(g) Dick. 395.

(h) 9 Ves. 299. 3 Br. C. C. 321.

ter's report, where the master *exceeds his authority*. "A suit had been instituted for a specific performance, and a reference to the master upon the title, who reported that with the *concurrence of a stranger, and not without*, a good title could be made, the report not excepted to, and confirmed: the cause coming on upon the report, defendant insisted that the question of title was untouched, and that the report was a *mere nullity*, that under the reference, the master was to say *aye or no* to the title, where as he had reported upon the conveyance, and the necessary parties; and having *exceeded his authority*, defendant was not bound to take exceptions, nor could he be prejudiced by omitting so to do. *Sir W. Grant, M. R.* inclined to that view of the case; but the point being new, and of importance, desired that a special application might be made by motion or petition, that the master should review his report.(a)

The distinction between costs generally, and costs joined with other matters, does not seem to have been very clearly ascertained by any decisive adjudication. Where the plaintiffs filed their bills as mortgagees, and also for carrying contracts into execution, (in which latter object they failed) and obtained the usual decree for an account as to the mortgage; upon exception to the report, disallowing the costs, incurred by making the defendants, who had entered into the contracts parties; in arguing the exception, it was objected that there cannot be an exception for costs, that it must be by petition; but it was insisted on the other side, that although there cannot be an exception for costs *only*, yet that if the party excepts upon any other ground, he may add an exception for costs; as upon a rehearing, or appeal upon other grounds, the question of costs may be gone into, though, there cannot be a re-hearing, or appeal

for costs only. *Lord Eldon, C.* understood the practice to be, that if the decree has directed costs, and *the master has not taxed them*, you may except; but if he has proceeded upon the costs, and has not *allowed several items*, which are claimed, there must be a petition, and allowed the exception, and referred it back to the master to review his report, as to the costs due to the plaintiffs as mortgagees, with a direction not to allow costs, occasioned by any other demand, except as mortgagees. (a) In a subsequent case, in arguing exceptions, one point made was, whether an exception would lie for costs, if joined with other matters? His lordship expressed doubts as to the distinction taken in his former adjudication of *Holbecke and Sylvester*, observing that frivolous exceptions would be taken, merely for the sake of costs; said, his opinion was, that exceptions would not lie for items of costs, which were items properly falling within the description of those costs which the master was to tax. (b)

The inference to be collected from these decisions, seems to be, that the judgment of the master, upon the allowance or disallowance of items, within the description of costs to be taxed by him, is to be reviewed by petition for leave to except; but that where an objection is made to the taxation of costs generally, as applicable to some particular point in the cause, upon which the court has either dismissed the bill, or given no relief, the course of practice is to except in the first instance. In *Holbeck v. Sylvester*, the plaintiff obtained the usual decree as to the mortgage, but failed as to the performance of the contracts, and the exception appears to have been taken, not to any particular item of costs, but to the whole of the costs, incurred by adding parties, and by introducing into the suit, the matter relating to the contracts to be performed in *specie*, and upon which the court refused

(a) 6 Ves. 417.

(b) 9 Ves. 299.

relief; and the court by directing the master to review his report, as to the costs of the mortgage only, and expressly not to allow costs as to any other demand, seems to have so decided.

Form of Exceptions taken to a Master's Report, where the Matter of Exception was very special.(a)

In Chancery.

Between Christopher Shapland, Plaintiff;
and
James Smith, Defendant.

Exceptions taken by the said defendant to the report of John Fames, esq. one of the masters of the High Court of Chancery, to whom this cause stands referred by the decree made therein, on the 18th day of May, 1778, whereby it was referred to him to see whether the plaintiff can make a good title to the estate in question to the defendant, and which report bears date the 27th day of November, in the year 1799.

First Exception.

For that the said master has, by his said report, certified that he was of opinion, that the plaintiff, together with the trustees and mortgagees, may make a proper conveyance by lease and release to the purchaser (under a good title) in fee; and that the term of fifty years therein mentioned, under the settlement of 1731, in the said report mentioned, the term of ninety years therein mentioned in the deed of September, 1770, in the said report mentioned; and the term of 1000 years, in the said report

mentioned to have been created the 21st of April, 1772, must be assigned to a trustee, for the purchaser to attend the inheritance. WHEREAS the said defendant apprehends, that the said master ought to have certified that a good title could not be made by the plaintiff to the said defendant, for the reasons following:

First.—For that it appears by the abstract left by the said complainant with the said master, that by the indentures of lease and release of the 15th and 16th days of August, 1781, therein mentioned, the estates in question were conveyed from and after the death of Christopher Shapland, and Mary his then intended wife, therein named, to trustees in moieties, for the term of fifty years, in each moiety, in trust, for raising £10,000 for the younger children of the said marriage, as the said Christopher should by his will direct; and it appeared to the said master, that there were two younger children of the said marriage, viz. Christopher Shapland and Rebecca Shapland. But it has not been made to appear before the said master, that the said two several terms of fifty years have been assigned to attend the inheritance, nor in whom the same are now vested. And,

Secondly.—For that it appears by the said abstract, that John Shapland, who by the abstract is stated to be seized in fee of the lands in question, by his will, dated the 21st of June, 1770, devised the same to trustees, to hold to them, their heirs and assigns, for ever, upon trust, and to and for the uses, intents, and purposes therein-after mentioned, viz. in the words following, “upon trust, “that they the said John Budd, John Shapland, “and George Shapland, and their heirs and assigns, shall, yearly, and every year, by equal “quarterly payments, by and out of the rents

“ and profits of the said premises, after deducting
 “ rates, taxes, repairs, expences, and out-goings,
 “ pay such clear sum as shall then remain unto
 “ my brother Christopher Shapland, and his as-
 “ signs, for and during the term of his natural
 “ life; and from and after his decease, to the use
 “ and behoof of the heirs male of the body of the
 “ said Christopher Shapland, lawfully to be begot-
 “ ten, as they and every of them shall be in priority
 “ of birth; and in default of such issue, I give
 “ and devise the same unto Christopher Shapland,
 “ son of the said George Shapland, for his life;
 “ and after his decease unto the said John Budd,
 “ George Shapland the elder, and John Shap-
 “ land, and their heirs, upon trust, to support
 “ the contingent remainders from being defeated;
 “ and after their decease, to the use and behoof
 “ of the right heirs of the body of the said Chris-
 “ topher Shapland, lawfully begotten; and in
 “ default of such issue, I give and devise the
 “ same unto his brother George Shapland, and
 “ the heirs male of his body, lawfully issuing;
 “ and in default of such issue, to John Shapland,
 “ his brother, and the heirs male of his body law-
 “ fully begotten; and in default of such issue, to
 “ his brother George Shapland, and the heirs
 “ male of his body lawfully begotten; and in de-
 “ fault of such issue, to the right heirs of the said
 “ John Shapland for ever.” And the said defend-
 ant therefore humbly submits to the judgment
 of this honourable court, whether by virtue of
 such will, the legal estate of and in the premises,
 did not become vested in the said trustees; and
 whether the said Christopher Shapland, the son,
 took any greater interest in the lands, than for his
 natural life, and to his first or other sons, in tail;
 and whether, therefore, the recovery in the said

abstract mentioned to have been suffered by the said Christopher Shapland, in Michaelmas term, 1770, is not void. And whether John Shapland, the son of the said Christopher Shapland (which John Shapland is now living, but not a party to the suit mentioned in the report) hath not now, as the first son of the marriage, an estate-tail in the said land. And

Thirdly.—For that it appears by the said abstract, that by indenture, dated the 5th day of October, 1775, the said Christopher Shapland, and Elizabeth his wife, declared the uses of a fine, levied by them in Trinity term then last, of the estate in question, to and for the confirmation of certain indentures of lease and release, of the 13th and 14th days of July then last, whereby after reciting various mortgages, he conveyed the estates in question to trustees, and their heirs, in trust, to be sold; and for securing the payment of several sums of money therein mentioned; and also for securing a further sum of £900; and for raising £6000 upon trusts intended to be mentioned in an indenture of the 6th of October, 1775, whereby the said Christopher Shapland, in consideration of his marriage, and of his wife's portion of £6000; and in consideration that he had, previous to his said marriage, agreed to settle on her, in case she survived him, and on her children, a competent provision; and in consideration that she had acknowledged the said fine, and of the love which he bore to his wife and children, and in performance of the said agreement, did give, grant, and appoint, unto trustees therein named, the sum of £6000 (parcel of the surplus money, for which he had contracted, to sell the said estates to the plaintiff) upon trust, that after the £6000 should be raised

by the said trustees, they should place the same out at interest, and pay the same to the said Christopher Shapland, for his life, and after his decease to the said Elizabeth Shapland, for her life; and after her decease, upon trust, to pay and divide the said £6000 to and among their then children, and to and among such other children as they should have, in manner therein mentioned; but as it is not declared by the said indenture, that the receipt of the trustees should be a sufficient discharge for the payment of the said sum of £6000, and it has not been made appear before the master, what the agreement was which is recited in the said deed to have been made previous to the said marriage, for making a provision for the wife and children, and neither of the trustees for sale of the said estates, nor the children of the said marriage, are parties to the suit; therefore the said defendant humbly submits, whether any proper discharge can be given for the said sum of £6000 (part of the purchase money) and whether the purchaser can therefore safely pay the said purchase money.

Second Exception.

For that as the said master hath certified, that the plaintiff, together with the trustees and mortgagees may make proper conveyance by lease and release, to the purchaser, under a good title in fee; and it appears by the abstract brought in before the said master, that there are various mortgages and incumbrances upon the estates in question, in this cause; and none of such mortgages or deeds, have been brought in or produced before the said master: and therefore it did not appear to the said master, nor is it stated by the said report, what incumbrances there are upon the said estates, nor who are the

necessary parties to make a legal conveyance thereof, supposing the said Christopher Shapland took an estate tail in the lands in question, and legally barred the same and all the remainders over; and therefore the defendant humbly insists, that the said master ought either to have stated by his said report, that the said Christopher Shapland could not alone make a good title to the estate in question, or should have set forth particularly who, by name, are necessary parties to make a legal conveyance thereof.

WHEREFORE the said defendant doth except to the said master's said report, and appeals therefrom to the judgment of this honourable court.(a)

Robert Bicknell.

(a) Mr. Dunning and Mr. Duane having given opinions in favour of the plaintiff, these exceptions came on to be argued before Mr. Baron Eyre, sitting for the lord chancellor, and masters Holford and Hett; the latter differed in opinion with them; but Mr. Baron Eyre doubting whether it was necessary that the opinion of the masters sitting with a *judge*, must concur with *his*, to found a decree (a), the cause stood over to be reheard by the lord chancellor. And upon the rehearing, the lord chancellor was of opinion with master Hett, and allowed the exceptions.(b)

(a) 1 Vern. 265.

(b) 1 Bro. C. C. 75.

The Form of Exceptions taken to a Master's Report, stating the Matter of Exception specially.

In Chancery.

Between William Robinson, and others, Plaintiffs ;
and
Henry Harrington, and others, Defendants.

EXCEPTIONS taken by the said complainants, and others, the judgment creditors of the said Henry Harrington, deceased, to the report of Sir John Simeon, bart. one of the masters of this honourable court, made in this cause, dated the 1st day of April, 1816.

First Exception.

For that the said master hath, in and by the schedule to the said report, intituled, " An account of the several
" sums of money which will be due on the 25th day of
" June, 1812, to the several mortgagees and judgment
" creditors of Henry Harrington, esq. deceased, on
" judgment obtained against him, in the years 1804, 1805,
" and 1806, and which were duly docketted and enter-
" ed up, which mortgages and judgments are placed ac-
" cording to their respective priorities," stated to be due to the defendants, Mary Carew, and Elizabeth Bernard, as executrixes of Thomas Carew, deceased, for principal and interest on a mortgage of the said Henry Harrington's estate, called the Old Field Farm, bearing date the 24th day of June, 1803, the sum of 269*l.* 14*s.* 10*d.* as appears by his said report annexed. **WHEREAS** the said

master ought not to have stated the same as prior to the mortgage after mentioned, bearing date the 5th of March, 1806. But that the several sums of money due to the several persons, on the several judgments, and in the order following, were prior thereto. (*that is to say;*)

£ s. d.

To Lawrence Fell, and Letitia. his wife, on two judgments, obtained By Elizabeth Sayer, and others, against the said Henry Harrington, in the court of Common Pleas, in Hilary term, 1804, and which said judgment was signed the 20th day of February, 1804	-	-	-	521	10	0
To Sarah Horton, on a judgment obtained by John Horton, in the court of King's Bench, in Easter term, 1805, against the said Henry Harrington, and which judgment was signed the 25th day of May, 1805				503	3	0
To Elizabeth Powell, widow, on a judgment obtained by John Roberts, in the court of King's Bench, in Easter term, 1806, against the said Henry Harrington, and which judgment was signed the 14th day of May, 1806	-	-	-	1043	3	0
To Stivered Plomley, on a judgment obtained by him in the court of King's Bench, in Easter term, 1806, against the said Henry Harrington, and which judgment was signed the 16th day of May, 1806				237	3	0
To William Perry, executor of Mary Pinker, who was executrix of John Pinker, on two judgments obtained by the said John Pinker, against the said Henry Harrington, in the Common Pleas, in Hilary term, 1805, and which judgments were signed on the 1st and 2d days of June, 1806	-			595	10	0

The said indenture, dated the 24th of June, 1803, not being a mortgage, or even a security, for the sum of 114*l.* 3*s.* 6*d.* then lent to the said Henry Harrington, on his bond, that can be now considered as an incumbrance on the said estates prior to the several judgments afore-said.

Second Exception.

For that the said master, in and by his said general report hath stated that the sum of 604*l.* 6*s.* due to the said defendants, Mary Carew and Elizabeth Bernard, as executrixes of Thomas Carew, deceased, on the 20th day of December, 1801, for principal and interest on a mortgage of the said Henry Harrington's estate, called Old Field Farm, and the manor of Kelstone, by indenture of lease and release, bearing date the 4th and 5th days of March, 1806, as appeared by a report made in this cause, dated the 17th day of July, 1801; and for interest of the sum of 285*l.* 16*s.* 6*d.* being the principal money due on the said mortgage, at the rate of 4*l.* 10*s.* per cent. per annum, from the said 20th day of December, to the 25th day of June, 1807, being five years, six months, and five days, the further sum of 70*l.* 17*s.* 9*d.* making together, 675*l.* 3*s.* 9*d.* is an incumbrance on the said estates, prior to the several debts by judgment, in the said general report mentioned to be due to Lawrance Fell, and Letitia his wife, Sarah Horton, Elizabeth Powell, Stivered Plomley, and William Perry. WHEREAS the said master ought to have stated, that the said sum of 604*l.* 6*s.* and the said subsequent interest, were due to the said defendants, subsequent to the demands of the said judgment creditors, or any of them, for that the several judgments were all duly docketted and entered up, as by the statute of the 4th and 5th of their for-

mer majesties king William and queen Mary, intituled,
 “ An act for the better discovery of judgments in the
 “ court of King’s Bench, Common Pleas, and Exchequer,
 “ at Westminster,” is required.”

Third Exception.

For that the said master hath, in and by the said schedule to the said report, certified, that the sum of 811*l*. 13*s*. reported due to John Stratford, as executor of Sarah Green, is the last in priority. WHEREAS the said master ought to have stated, that the same is fourth in priority.

In all which particulars the said plaintiffs do except to the said report, and appeal therefrom to the judgment of this court.

Francis Hargrave.

The Form of Exceptions taken to a Master’s Report, special Matter of Exception being assigned.

In Chancery.

Between John Yeoman, Plaintiff;
 and

John Wilkinson, Defendant.

EXCEPTIONS taken by the said complainant to the report of Francis P. Stratford, esq. one of the masters of this court, bearing date the 6th day of March, 1816, made in this cause, to whom the same stood referred by the decretal order, bearing date the 10th day of December, 1814.

First Exception.

For that the said master hath, in and by his said re-

port, certified, that during the time the ship in the pleadings mentioned, was employed, there was such privilege or custom, as is insisted upon by the defendant's answer in respect to deals for stowage. WHEREAS the said master ought to have certified, that during the time the ship in the pleadings mentioned, was employed, there was no such privilege or custom as is insisted upon by the defendant's answer, in respect to deals for stowage.

Second Exception.

For that the said master hath certified, that under such privilege or custom, as is in the said report mentioned, and considering the transactions between the part owners and the defendant, to the 30th of August, 1812, the defendant subsequent to that time, is entitled to the privilege or custom in the report and decree mentioned. WHEREAS the said master ought to have certified, that notwithstanding he conceived, that there was such privilege or custom, yet, that considering the transactions between the part owners and the defendant to the 30th of August, 1812; the defendant, subsequent to that time is not entitled to such privilege or custom.

Wherefore the said complainant doth except thereto, and prays, that the said exceptions may be allowed, and that the master may review his report as to the accounts mentioned in the said decree accordingly.

Geo. B. Roupell.

Exceptions to a Master's Report of Costs.

In Chancery.

Between Barth. Hammond and Isaac Russell,
executors of the last will and testa-
ment of Wm. Gason, gent. deceased,
and Catherine Grainger, spinster,
Plaintiffs;

and

Samuel Wordsworth, and others,
Defendants.

Exceptions taken by the plaintiffs to the report made in this cause, the 14th day of March, 1765, by John Eames, esq. one of the masters of this court, who succeeded Thomas Bennett, esq. the master to whom this cause was by the decree referred by leave of court for that purpose.

First Exception.

For that the said master in the taxation of the plaintiff's bill of costs in this cause hath not allowed to the plaintiffs the several sums of money hereafter mentioned for the costs of sending a commission to Stockholm, in the kingdom of Sweden, to examine witnesses (*de bene esse*) in this cause, and for a duplicate of such commission, and interrogatories made under the direction of an order of this honourable court, nor hath the said master in his taxation of the said bill of costs allowed to the plaintiffs the charges of the voyage and other expences of the solicitor to the said commission and his clerk going to Stockholm to get the said commission executed, *whereas* the

said master ought to have allowed to the plaintiffs the said several sums of money, or a large proportion thereof, there being sufficient proof laid before the said master of the necessity of sending persons to Stockholm with the said commission, and of the actual payment of the several sums of money attending the same, as mentioned in the said bill of costs; and therefore, as the plaintiffs are advised, such costs ought to have been allowed between party and party, viz.

EASTER TERM, 1748.

	£	s.	d.
Paid for a duplicate of the commission	0	15	10
May. Paid expences of Mr. Gordon and clerk to the commission, going to Gravesend to take shipping to Stockholm with commission	2	5	0
Paid and laid out for necessities for their voyage	4	15	6
Paid Captain Wilkinson for their passage to Stockholm	18	18	0
Ingrossing duplicate of interrogatories in English, fol. 104	1	14	0
Parchment and duty for ditto	0	10	6
Ingrossing duplicate of interrogatories translated into Swedish, fo. 120	2	0	0
Parchment and duty for ditto	0	10	6
Ingrossing translation of duplicate of said commission	0	3	4
Parchment and duty for ditto	0	2	0

TRINITY TERM, 1748.

Paid for horses and carriage from the Dollars to Stockholm, and water carriage for the luggage and expences, 37 dollars, 10 ore	0	18	10
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Second Exception.

For that the said master in the taxation of the plaintiffs' said bill of costs, hath not allowed to the plaintiffs, the several sums of money after-mentioned, to have been paid by the plaintiffs, for divers copies of Swedish documents or records, taken from the several officers in Sweden, relating to the matters in question in this cause, which were proved upon the execution of the said commission, nor hath the said master allowed to the plaintiffs the several sums of money paid for translating such document or records from the Swedish into the English language, and for examining the same with the records to be proved as exhibits in this cause, whereas the said master ought to have allowed the plaintiffs the said several sums of money or some considerable proportion thereof, there being sufficient proof laid before the said master of the payment of the said several sums of money, charged in the plaintiff's said bill of costs to have been paid for the same, and that the necessity of taking several of such copies arose from the answer of the said defendant, Wordsworth, and ought to have been allowed as costs between party and party, viz.

TRINITY TERM, 1748.

	£	s.	d.
Paid for instrument of sale of the 22d June, 1772; of a piece of ground part of the Honsberg estate from the magistrates of Stockholm to Mr. Grainger	0	6	0
Paid for instrument, being the magistrates' confirmation of the two former (the expence of one of them having been allowed by the master,)	0	12	0
Paid Mr. Peter Borgstrom for translating the said documents from the Swedish into the			

	£	s.	d.
English language, and expences with him thereon, (108 dollars)	4	10	0
Paid at the several offices in Sweden for exa- mining five exhibits to be produced to wit- nesses on commission, nine dollars each	1	2	6
Paid Mr. Borgstrom for his trouble and attend- ance to examine same in order to prove on commission	2	13	0

Third Exception.

For that the said master in the taxation of the plaintiffs' said bill of cost, hath allowed no more than 5*l.* part of a sum of 25*l.* paid by the plaintiffs for lodging and board for solicitor, clerk, and other attendants for six weeks, and upwards, on account of executing the above-mentioned commission and other incident expences, whereas the said master ought to have allowed the whole of the said expences or a much larger proportion thereof, than the said sum of 5*l.* The whole sum of money actually paid by the plaintiff on that account being one thousand eight hundred dollars, Swedish money, amounting to the sum of

25 0 0

Fourth Exception.

For that the said master, in the taxation of the plaintiffs' said bill of costs, hath not allowed to the plaintiffs the several sums of money after mentioned paid by the plaintiffs for the charges and expences of the voyage, for the solicitor and clerk returning back to England with the commission in this cause executed; *whereas* the said master ought

to have allowed to the plaintiffs the said several sums of money, or some large proportion thereof, there being sufficient proof laid before him of the actual payment of the whole of such several sums of money by the plaintiffs, and the same ought, as plaintiffs are advised, to have been allowed as costs of suit between party and party, viz.

TRINITY TERM, 1748.

	£.	s.	d.
Paid taking out passes for them to return for England and custom house officers, &c. 50 dollars		1	5 0
Paid for provision and necessaries for the voyage from Stockholm to England, 200 dollars		5	0 0
Paid their expences from Stockholm to Wex- holm, to take shipping, and clearing at the castle, 60 ditto		1	10 0
Paid their expences from Gravesend to Lon- don, and at the custom-house clearing their baggage		1	15 6
Paid for their passage from Stockholm to Eng- land		18	18 0

Fifth Exception.

For that the said master hath in the taxation of the plaintiffs' said bill of costs, allowed no more than three guineas, part of a sum of five guineas paid by the plaintiffs to Hans Hyssing, for translating the commission to be sent to Stockholm, to examine witnesses in chief in this cause, pursuant to an order of this honourable court, and a fresh set of interrogatories for that purpose into the Swedish language, *whereas* the said master ought to have al-

£' s. d.

lowed the whole sum of money paid by the plaintiffs to the said Mr. Hyssing for making such translation (exclusive of the sum of three guineas paid by the plaintiffs to one Daniel Gordon, for assisting therein) being 5 5^s 0

Sixth Exception.

For that the said master, in the plaintiffs' said bill of costs, hath not allowed to the plaintiffs the several sums of money before-mentioned, paid and expended by the plaintiffs upon the several applications to the king and senate of Sweden, for leave to execute the said commission in chief, which was refused, *whereas* the said master ought to have allowed the plaintiffs the said several sums of money or a large proportion thereof, there being sufficient proof laid before him of the actual payment thereof by the plaintiffs; and that such applications for leave to execute the said commission were made under the direction of an order of this honourable court, viz.

TRINITY TERM, 1750.

£ s. d.

Paid Mr. Springe, preparing another petition of Robert Finlay alone, for leave to execute commission in chief, 3 ducats	-	-	1	7	0
Paid for the king of Sweden's resolution on said petition, which was denied	-		1	19	0
Paid for an attested copy of another petition, preferred by Peter Pomp alone, for the same purpose, which was likewise denied	-		0	5	0

EASTER TERM, 1751.

£ s. d.

Paid Mr. Borgstron, for translating the four Swedish papers after mentioned, to be proved in this cause, viz.

The petition preferred to the king and senate of Sweden, by Messrs. Finlay and Pomp, for leave to execute commission in chief

The petition of Robert Finlay alone, for the same purpose - - -

} 2 2 0

The petition of Peter Pomp alone, for the same purpose - - -

The King of Sweden's resolution on the petition of Gustaff Kierman - - -

Seventh Exception.

For that the said master in the taxation of the plaintiffs said bill of costs, hath not allowed to the plaintiffs the several sums of money after mentioned, paid by them to W. Cole and clerk, for their time and trouble going over to Sweden with the said commission in chief, and for the expences of their voyage to and from Sweden, and during their stay there, *whereas* the said master ought to have allowed the plaintiffs the said several sums of money or some large proportion thereof, there being sufficient proof laid before him of the actual payment of the whole of the said several sums of money by the plaintiffs to the said Wm. Cole and his clerk, and likewise of the necessity of sending proper persons to Sweden, to endeavour to get leave to execute the said commission, viz.

£ s. d.

Paid Mr. Wm. Cole for his time and trouble going over to Sweden with commission in chief - - -

50 0 0

Paid his clerk for ditto - - -

21 0 0

£ s. d.

Paid the expences of their voyage to and from Sweden, and during their stay there	52 10 0
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Eighth Exception.

For that the said master in the taxation of the plaintiffs' said bill of costs, hath allowed no more than 5*l.* 5*s.* part of a sum of 15*l.* 15*s.* paid by the plaintiffs to Mr. Hyssing for translating the several depositions and exhibits from the Swedish language, *whereas* the said master ought to have allowed the whole sum of money paid by the plaintiffs to the said Mr. Hyssing, or a much greater part thereof than the said 5*l.* 5*s.* the plaintiffs having actually paid the said Mr. Hyssing for making such translation (exclusive of the sum of ten guineas paid to the said Daniel Gordon for assisting him therein) the sum of - - -

15 15 0

Ninth Exception.

For that the said master in the taxation of the plaintiffs' said bill of costs hath allowed no more than the sum of 10*l.* 5*s.* part of the sum of 200*l.* paid by the plaintiffs to John Gordon for his trouble of going to Stockholm in Sweden, to execute the commission *de bene esse*, and for his trouble and attendances thereon, and other matters relative to this cause during his stay in Sweden; *whereas* there was sufficient proof laid before the said master of the absolute necessity of sending proper persons to Sweden with the said commission, and of the actual payment of the said sum of 200*l.* to the said John Gordon, which he insisted that he deserved to

have for his trouble therein, and therefore plaintiffs are advised the said master ought to have allowed the plaintiffs the whole of the money so paid by them to the said John Gordon, or a much larger proportion thereof than the said sum of 16*l.* 5*s.*

- 200 0 0

Tenth Exception.

For that the said master in the taxation of the plaintiffs' said bill of costs hath not allowed to the plaintiffs the sum of 75*l.* 12*s.* paid by them to Thomas Burgh, for going over to Stockholm, as clerk to the said commission, or any part thereof, *whereas* the said master ought to have allowed the plaintiffs the said sum of money or some larger proportion thereof, there being sufficient proof laid before the said master of the payment thereof to the said Thomas Burgh, and that the same was recovered by the said Thomas Burgh in an action at law brought by him against the late plaintiff Wm. Gason, and therefore the same ought, as plaintiffs are advised, to have been allowed by the said master to the plaintiffs, in the taxation of the plaintiffs' said bill of costs *

- 75 12 0

In all which particulars the said plaintiffs do except to the said master's report, and humbly appeal therefrom to the judgment of this honourable court. (a)

E. Hoskyns.

(a) Lord Chancellor.

Wednesday, 30th day of October, 1765.

Between Bartholomew Hammond and others, Plaintiffs; and Samuel Wadsworth, and others, Defendants.

The Matter of the Exceptions taken by the Plaintiffs to the

The Form of a general Exception taken to a Master's Report, under an Order of Reference to look into the Plaintiff's Bill and the Defendant's Answer, and the Exceptions taken thereto, and to certify whether the Answer be sufficient in the Points excepted unto or not. (a)

In Chancery.

Between John Scott, and Ann his wife, Plaintiffs ;
and
Gabriel Bradley, and others, Defendants.

An Exception taken by the said defendant, Gabriel Bradley, to the report of sir John Simeon, bart. one of the masters of this court, bearing date the 15th day of November, 1816.

For that the said master hath, in and by his said report, report of Mr. Eames, one of the Masters of this court, dated the 14th of March, 1765, coming this present day to be argued before the Right Honourable the Lord High Chancellor of Great Britain, in the presence of counsel learned on both sides. And the said Plaintiffs' first exception being opened upon debate of the matter, and hearing an affidavit of the late Plaintiff William Gason and John Gordon, an affidavit of Christopher Springer, and another affidavit of the said late Plaintiff William Gason and John Gordon Read, and what was alledged by the counsel on both sides, *His Lordship doth order*, that the matter of the said exceptions do stand over till the first day of exceptions after Term, and in the mean time *it is further ordered*, that it be referred to the three senior masters of this court to peruse the said exceptions, and to certify to his lordship *whether the charges therein contained for*

certified, that the defendant, Gabriel Bradley's answer is insufficient in all the points excepted unto. WHEREAS the said master ought to have disallowed all and every the exceptions taken by the plaintiff, John Scott, to the said answer of the said Gabriel Bradley; and to have reported that the answer is sufficient in all points excepted unto by the said complainant.

In all which particulars the defendant, Gabriel Bradley, excepts to the said master's said report.

Geo. B. Roupell.

solicitors, attornies and clerks, going over to carry and execute foreign commissions, and the several expences relative thereto have been usually, and in what cases allowed. And thereupon such further order shall be made relating thereto as shall be just.(a)

Where sufficient ground appears the court will direct the taxation of costs by one master, to be reviewed by another master. In *Gorges v. Falkner*, by order dated the 27th of November, 1792, upon the application of Mr. Solomon Fell, the bills of costs taxed by Mr. Wilmot were referred to Mr. Holford to be reviewed.

(a) See Ant. Title Certificate.

Exceptions taken to a Master's Certificate under an Order of Reference, to certify whether an Examination of a Party to Interrogatories settled by the Master in pursuance of a Decree is sufficient or not.(a)

In Chancery.

Between Archibald Paxton, and another, Plaintiffs;
and

Ann Douglas, widow, Defendant.

An exception taken by Charles Christie, who claims to be admitted a bond creditor of Peter Douglas to the report of Francis Paul Stratford, esq. one of the masters of this court, dated the 10th March, 1810.

(a) The exceptant, a creditor coming in before the master, to prove his debt: interrogatories had been brought in for his examination, to which objections were made, as tending *to subject, or render him liable to penalties*; the objection was supported by a state of facts laid before the master, who overruled the objections, and allowed the interrogatories: exceptions were taken to the master's certificate of allowance: the exceptions came on to be argued, and the case of Staniford v. Tudor, Dick. 248, was cited, to shew that exceptions would not lie to a master's certificate of settling interrogatories; in answer to which, it was observed, that since that case, there were several instances of exceptions to the master's certificate of allowing interrogatories. Lord Eldon expressed an opinion, that the objection was not to putting the question, but to answering it when put; that the witness was before the master precisely in the situation of a witness called to give evidence personally, and that the interrogatories must be put to the witness, and it must be left to himself whether he will answer them or not; that the exception should be, not to the propriety of the interrogatories, but to the master's certificate, upon what he does after the interrogatories are addressed to the witness; and his lordship disallowed the exception, but ordered the deposit to be returned. An examination was put

For that the said master hath in and by his said report, certified that the answer and examination of the said Charles Christie to interrogatories settled by the said master, for the examination of the said Charles Christie, is insufficient; *whereas* the said master ought to have certified that the said answer and examination is sufficient.

In all which particulars, &c.

G. B. Roupell.

in to the interrogatories, and upon a reference to the master, he had certified that the examination was insufficient; an exception was taken to the master's certificate, and the matter came on several times, and Lord Eldon having taken time to consider, at length made the following order allowing the exception.

14th August, 1812. Paxton and another v. Douglas.—The matter of the exception taken by Charles Christie, who claimed to be admitted as a bond creditor of Peter Douglas, to the report of F. P. Stratford, esq. one of the masters of this court, dated the 10th March, 1810, coming on the 27th July, 1812, to be argued before the Lord High Chancellor, in the presence of counsel for the said Charles Christie, and for the plaintiff and defendant; and the said exception being opened, and the same being, for that the said master hath in and by his said report, certified that the answer and examination of the said Charles Christie, to interrogatories settled by the said master for the examination of the said Charles Christie is insufficient, whereas the said master ought to have certified that the said answer and examination is sufficient; whereupon and upon debate of the matters, and hearing what was alledged by the counsel for the said parties, his lordship did order that the said exception stand for judgment; and the said exception standing this present day in his lordship's paper for judgment in the presence of counsel learned for the said parties, his lordship held the said exception to be good and sufficient, and doth therefore order that the same do stand and be allowed; and it is further ordered that the sum of five pounds deposited with the register on setting down the said exception be returned.

Form of Consent that Depositions should be suppressed, as if an Order had been obtained for that Purpose, (where the Master upon Reference had certified that the Interrogatories were in Part leading,) and that the Exception taken to the Report be withdrawn.

In Chancery.

Between John Greenwood, Plaintiff;
and

Joshua Aked and Thomas Aked, Defts.

Whereas Master Holford, by his report, dated the 22d day of February instant, hath certified part of the third interrogatory exhibited by the said plaintiff to be leading, I do hereby consent and agree that so much of the depositions of Jonas Eastwood and John Walker, as hereafter set forth, be considered as suppressed, and as if an order was obtained for that purpose, and that the same shall not be read or given in evidence at the hearing of this cause, or on any other occasion whatsoever; and that the exception filed to the said report be withdrawn. As witness my hand, this 28th day of February, 1781.

Francis Gregg, solicitor for plaintiff.

William M. Lally, clerk for plaintiff.

Jonas Eastwood. To the 1st, 3d, and 4th interrogatories. " And that since that time this deponent has
" heard the said defendant, Joshua Aked, express a desire
" to, or wish that he could, become a purchaser or sole
" owner of the said estate at Elphabrough Hall aforesaid,
" and the reason which the said defendant, Joshua Aked,
" gave for such his desire, was because he had another

“ farm which lay near it, called Banks, and they were
“ two of the better sort of farms in those parts.”

John Walker. To the 3d and 5th interrogatories,
“ This deponent saith, that the defendant, Joshua Aked,
“ hath several times told this depopent that he had a de-
“ sire to buy the said estate called Elphabrough Hall,
“ and that he would give as much money for it as any
“ body.”

EXHIBITS.

Deeds, Letters, or other Writings, proved *viva voce*, in Court, or upon Interrogatories, or by Affidavit, and shewn in Evidence in a Cause, are thence termed *Exhibits*, and are thus indorsed :

In Chancery.

Lawrence v. Wilson.

12th June, 1816. John Crew sworn in open court to the execution hereof.

J. Dickins,
Dep. Register.

20th June, 1816. This paper-writing, marked A, was produced and shewn to John Crew, and is the paper-writing referred to in his affidavit, sworn before

J. P. Stratford.

16th July, 1816. At the execution of a commission for the examination of witnesses in this cause, this *deed, parchment, or paper-writing*, marked A, was exhibited to us and shewn to John Crew, and by him deposed unto at the time of his examination on the part of the plaintiff; and was also produced and shewn unto John Delves, and by him deposed unto, &c.

Ralph Manwarring.
George Grosvenor.

Paper-Writing produced, and proved and made an
Exhibit in a Cause.

London, 10th June, 1815.

Two months after date, pay to Messrs. John and
Peter Le Comte, or their order, the sum of four
hundred pounds, value received, which place to
the account of Robert Kensington.

To Messrs. Richard Brown and Co. A.
Merchants, Stone, Staffordshire.

On the 13th day of August, 1815, at the request of
Messrs. Hoare and Co. of London, merchants; I John
Dent, notary public, by lawful authority admitted
and sworn, dwelling in Stone, in the county of Stafford,
went with the original above-copied bill of exchange, to
the house of Richard Brown, on whom the said bill is
drawn, and exhibiting the said bill to the said Richard
Brown, I demanded payment thereof, whereunto he an-
swered that the said bill of exchange would not be paid.

Wherefore, I, the said notary public, at the request
aforesaid, did, and do by these presents, protest as well
against the said drawer of the said bill, as all others
whom it doth or may concern, for exchange and re-
exchange, costs, damages, and interest suffered and
to be suffered, for want of payment of the said bill of
exchange, thus protested in the presence of William
Brett, and Joseph Nicols, witnesses.

John Dent,

L. S.

Notary Public.

In Chancery.

Lawrence v. Wilson.

16th July, 1816. *At the execution of a commission
for the examination of witnesses in this cause, this
paper-writing marked A, was exhibited to us, and
shewn to William Brett, and by him deposed unto at
the time of his examination on the part of the plaintiff.*

Ralph Manwarring.

George Grosvenor.

INFORMATIONS.

Title and Words of Course preceding an Information at the Suit of the Crown.

To the Right Honourable John, Lord Eldon, &c.

Informing, sheweth unto your Lordship, *Sir William Garrow*, knight, his Majesty's attorney general, on behalf of his Majesty, That, &c.

And his Majesty's attorney general further informeth, &c.

Words of Course, at the Instance of a Relator.

Informing, sheweth unto your Lordship, *Sir William Garrow*, knight, his Majesty's attorney general, at and by the relation of *Sir John Delves, of Doddington, in the county of Chester, bart.* That, &c.

And his Majesty's attorney general, by the relation aforesaid further informeth, and your orator further sheweth, That, &c.

INTERROGATORIES.

The Title and Words of Course preceding Interrogatories, filed at the Examiner's Office, for the Examination of Witnesses in Town, or by Commission in the Country, &c.

In Chancery.

Interrogatories to be administered to witnesses to be produced, sworn and examined (*de bene esse*) in a certain cause, now depending and at issue, in the High Court of Chancery, wherein Sir John Delves, and Sir Thomas Dutton, are complainants; and Sir Robert Foulhurst, and Sir John Hawkstone, are defendants; on the part and behalf of the said complainants.

First Interrogatory, Do you, &c.

Lastly, Do you know, &c.

The like for the Examination of a Party in the Master's Office.

In Chancery.

Between George Grosvenor, Plaintiff,
and
Gilbert Troutbeck, Defendant.

Interrogatories exhibited on behalf of the said complainant, before Sir John Simeon,

bart. one of the masters of this court, to whom this cause stands referred, for the examination of the defendant, (or for the *examination of George Booth, who claims to be a creditor of the testator John Donne in the pleadings named,*) pursuant to the decree made on the hearing this cause, dated the 10th day of July, 1816.

First Interrogatory, Whether or no was, &c.
Lastly, Do you know, &c.

The like of Interrogatories for the Examination of a Party, *pro interesse suo*.

In Chancery.

Between, &c.

Interrogatories exhibited before Francis P. Stratford, esq. one of the masters of the High Court of Chancery, for the examination of Charles Christie, a defendant in this cause, *pro interesse suo*, in certain estates in the pleadings in this cause mentioned, pursuant to an order made in this cause, bearing date the 10th day of June, 1816.

The like Interrogatories for Cross Examination
of a Party examined *pro interesse suo*.

In Chancery.

Between, &c. "

Interrogatories exhibited before Robert Steele, esq. one of the masters, &c. for the cross-examination of the above-named defendant, pursuant to an order made in this cause, dated the 4th July, 1816, whereby it was ordered that the said defendant, George Grosvenor, be at liberty to go before Mr. Steele, one, &c. and be examined *pro interesse suo*.

Interrogatories to prove Deeds and Endorsements
by subscribing Witnesses, Parish Registers,
Records, &c.

Interrogatories to be administered to witnesses, &c. on the part and behalf of the said complainant or defendant, *as the case may be*.

First Interrogatory. Do you know the parties complainants and defendants in the title of these interrogatories named, any, or either, and which of them, and how long have you known them, or any and which of them respectively? Declare the truth of the several matters by these interrogatories inquired after, according to the best of your knowledge, remembrance, and belief.

Second Interrogatory. Look upon the several deeds or paper-writings, now produced and shewn to you at this the time of your examination, marked respectively with the letters A, B, C, D. Was you or was you not present as a witness? and did you, or not, see the same, or any and which of them, or *any and what deed or writing indorsed thereon, or on any and either and which of them*, signed, sealed, and delivered, or in any and what manner executed, at or about any, and what time or times, and by whom by name in your sight or presence? And is not your name subscribed as a witness thereto, of your own hand-writing? Did you or did you not see the other witnesses, whose names are set or subscribed thereto, or on any and which of them set and subscribe their respective names, as witnesses to the signing, sealing, and execution thereof, or of any and which of them? And are they, or any and which of them now living or dead? Are you or not acquainted with the character or manner of hand-writing of the said several persons, whose names are so set or subscribed as parties executing, or as witnesses to the execution of the said several produced deeds or paper-writings, or any and which of them? And have you, or have you not, and how often seen them, or any and which of them, write? Are, or are not their names so set and subscribed, or any and which of them, of the proper hand-writing of such person or persons whose names they purport to be? Declare, &c.

Third Interrogatory. Look upon the several writings now produced and shewn to you, at this the time of your examination, marked respectively, No. 1, 2, 3, 4. Have you, or have you not, examined and compared the same, or any and which of them, with any and what rolls and records, or entries made thereof, in any and what office, or in the register book of births, marriages, and burials, of any and what parish or place, and with whom, and when, and in what manner, did you so

examine and compare the same, or any and which of them, and by whom, and in what place are the said rolls, records, and parish registers kept? And are or are not the same, or any and which of them true copies of such rolls, records, or parish registers, or entries respectively? Declare, &c.

Lastly. Do you know of any other matter or thing which may be of any benefit or advantage, or material to the said complainant? If yea, set forth and declare the same, and the particulars and circumstances of what you know or believe fully and at large.

T. Sewell.

ISSUE.

Form of pleading in a feigned Issue directed by a Decree or Order to be tried in a Court of Law.

Ordering part of decree.

Troutbeck v. Crew.

His lordship doth order that the parties do proceed to a trial at law, at the sittings after Hilary term next in the court of King's Bench in London, (*or at the next Lent assizes to be holden for the county of York*) or at such other time as the lord chief justice of that court shall appoint, by a special jury on the following issue, whether the defendant Richard Mainwaring was a partner with the late defendant Ralph Leycester and the defendant Francis Crew on the 19th day of March, 1805, and to the end such trial may be had, the plaintiffs here are to be plaintiffs at law, And the defendant Richard Mainwaring is to be defendant at law, And he is forthwith to name an attorney, accept a declaration, appear, and plead to issue, with liberty for the defendant John Egerton, and others, to appear by their respective counsel at the trial of such issue, and to defend separately from the other parties. And it is hereby referred to Mr. Stratford, one of the masters of this court, to settle the issue in case the parties differ about the same; and if the jury shall find that the said Richard Mainwaring and Ralph Leycester were partners in the said trade, then the time when such partnership commenced, and

the duration thereof, are to be indorsed on the postea. And it is further ordered that all books, deeds, papers and writings in the custody or power of any of the parties, relating to the matters in question, be produced before the said master upon oath, on or before the first seal after Michaelmas term next, as the said master shall direct; and any of the parties are to be at liberty to inspect the same, and take copies or extracts thereof, as they shall be advised at their own expence, and such of them as either side shall give notice to have produced at the said trial are to be produced accordingly; and his lordship doth reserve the consideration of costs, and of all further directions until after the said trial shall be had, &c.

Form of Issue made up for Trial in the Court below.

Hilary term, in the 56th year of the reign of king George the third.

Law and Markham.

London, to wit. Be it remembered, that on *Saturday* next after *eight days of St. Hilary* in this same term, Thomas Troutbeck and Thomas Booth came before our lord the king at Westminster, by William Potts their attorney, and bring into the court of our said lord the king now here their bill against Richard Manwaring, being in the custody of the marshal of the Marshalsea of our sovereign lord the king, before the king himself, in a plea of trespass on the case; and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit,

London to wit, Thomas Troutbeck and Thomas Booth complain against Richard Manwaring being in the custody of the marshal of the Marshalsea of our sovereign lord the king, before the king himself, *for that whereas on the first day of January in the year of our Lord one thousand eight hundred and fifteen, at London aforesaid in the parish of St. Mary-le-bow, in the ward of Cheap*, a certain discourse was had and moved by and between the said Thomas Troutbeck and Thomas Booth, and the said Richard Manwaring, of and concerning the said Richard Manwaring, and whether the said Richard Manwaring was a partner with one Ralph Leycester and one Francis Crew on the *nineteenth day of March, in the year of our Lord one thousand eight hundred and five*. And on that discourse the said Thomas Troutbeck and Thomas Booth, did then and there assent and affirm, that the said Richard Manwaring was a partner with the said Ralph Leycester and Francis Crew on the *said nineteenth day of March, in the said year of our Lord one thousand eight hundred and five*, which said assertion the said Richard Manwaring then and there wholly denied. And thereupon the said Richard Manwaring, afterwards, to wit, *on the said first day of January, in the year of our Lord one thousand eight hundred and fifteen aforesaid, at London aforesaid, in the parish and ward aforesaid*, in consideration that the said Thomas Troutbeck and Thomas Booth, at the special instance and request of the said Richard Manwaring had then and there paid to him the said Richard Manwaring, five shillings of lawful money of Great Britain, undertook and to the said Thomas Troutbeck and Thomas Booth then and there faithfully promised that he the said Richard would pay to the said Thomas Troutbeck and Thomas Booth forty shillings of like lawful money of Great Britain if the said Richard Manwaring was a partner with the said Ralph Leycester and Francis Crew on the *said nineteenth day of March*

in the said year of our Lord one thousand eight hundred and five. And the said Thomas Troutbeck and Thomas Booth in fact say, *that the said Richard Manwaring was a partner with the said Ralph Leicester and Francis Crew, on the said nineteenth day of March, in the said year of our Lord one thousand eight hundred and five,* whereof the said Richard Manwaring, to wit, on the said first day of January, in the said year of our Lord one thousand eight hundred and fifteen, at London aforesaid, in the parish and ward aforesaid, had notice, whereby the said Richard then and there became liable to pay to them the said forty shillings, to wit, at London aforesaid, in the parish and ward aforesaid. Nevertheless the said Richard, not regarding his said promise and undertaking by him made as aforesaid, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said Thomas Troutbeck and Thomas Booth in this behalf, hath not paid to them, or either of them, the said sum of money, or any part thereof; although to pay the same to the said Thomas Troutbeck and Thomas Booth, he the said Richard Manwaring, on the said first day of January, in the said year of our Lord one thousand eight hundred and fifteen, at London aforesaid, in the parish and ward aforesaid, was duly requested, but to pay the same or any part thereof to the said Thomas Troutbeck and Thomas Booth, or either of them, he the said Richard Manwaring hath hitherto wholly refused, and still doth refuse, to the said Thomas Troutbeck and Thomas Booth their damage of ten pounds. And thereof they bring suit, &c.

And the said Richard, by James Wilbraham, his attorney, comes, and defends the wrong and injury, when, &c. And as to the promise and undertaking in the said declaration mentioned, the said Richard says, that the said Thomas Troutbeck and Thomas Booth ought not to have or maintain their said action thereof against

LETTER OF ATTORNEY.

Letter of Attorney to receive Money reported
due to a Mortgagee in a Cause.

Between John Brickdale, esq. Plaintiff;
and
Edward Hill, gent. Defendant.

Know all men by these presents, that whereas Edward Morris, esq. one of the masters of the high court of Chancery, in pursuance of an order (a), made in this cause the 30th day of November last, did certify and report to the said court, that on the 31st day of July next, there would remain due to the plaintiff, for his principal and interest on the mortgage from the defendant, Edward Hill, the sum of nine hundred, ninety-nine pounds, eighteen shillings and five-pence, and for his costs of suit to the time of the said report the sum of thirty-four pounds and six shillings, making together the sum of one thousand, thirty-four pounds, four shillings, and five pence. And he did thereby appoint the said defendant, Edward Hill, to pay unto the said plaintiff, John Brickdale, or his lawful attorney, the said sum of one thousand, thirty-four pounds, four shillings and five pence, upon the said 31st day of July next, between the hours of eleven and twelve of the clock in the forenoon, at the chapel of the Rolls in Chancery-lane: as by the said report (which is duly confirmed) on reference had may appear: Now know ye, that I the

(a) For the order see Hands' Chanc. 196.

said John Brickdale, of the city of Bristol, esq. the plaintiff in this cause, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, and in my place and stead, put and depute John Greke Brickdale of the Middle Temple, London, esq. and Henry Kensit, of Bedford-Row, Bloomsbury, in the county of Middlesex, gent. or either of them, my good and sufficient attorney and attornies, for me, and in my name, and for my use to attend as aforesaid, and to demand and receive of and from the said Edward Hill, his executors, administrators, or assigns at the time and place aforesaid, the said sum of one thousand, thirty-four pounds, four shillings, and five-pence, reported due and owing to me from him the said Edward Hill, as aforesaid: And on payment thereof for me, and in my name, good and sufficient releases, acquittances, and other discharges for the same, to make, seal, deliver, and execute, and all and whatsoever my said attorney or attornies, or either of them, shall lawfully do, or cause to be done, in the premises, by virtue of these presents, I the said John Brickdale, do, shall, and will allow, ratify, and confirm, as fully and effectually, to all intents and purposes whatsoever, as if the same was actually done by me, and as I myself could or might do in my own proper person. In witness whereof I have hereunto set my hand and seal this 22d day of April, in the year 1816.

J. Brickdale.

Sealed and delivered in the presence of

Geo. Pomphrey.

Sam. Newman.

MINUTES.

Minute of an Order made upon a Petition of Appeal reversing a Decree at the Rolls, with very special Directions.(a)

Lord Chancellor.

Friday the fifteenth day of January,
one thousand seven hundred and
seventy-three.

Delabere } Cur. Let the decree of the tenth day of
Bridges } March last be reversed, and let the deposit
be paid to the defendant Bridges, and refer it to the
former master to compute interest on the sum of 281*l.*
2*s.* 6*d.* reported due by the report of the 9th of December,
1762, from the foot of the report, after deducting so
much of the 47*l.* 10*s.* 11*d.* allowed the then plaintiffs
for costs paid to the defendants William Cooke, and his
wife, as respects that part of the bill as prayed an account
of the personal estate of the intestate John Bridges,
and tax the plaintiff his costs of this suit, and let the
master take an account of what the plaintiff hath laid
out *in lasting improvements on the premises*, and compute
interest on what he shall find the plaintiff hath so
laid out, after the like rate of interest the mortgage
carries, and let what shall be found due on that account
be added to what shall be found due to the plaintiff for
principal, interest, and costs as aforesaid; and let the
master take an account of the rents and profits of the

(a) See infra, title "Petitions."

MINUTES.

mortgaged premises received by the plaintiff, or those under whom he claims, or by any other person by their or either of their order, or for their or either of their use, *or which without their or either of their wilful default, (a) might have been received*; and let the clear balance of the said account of rents and profits, be deducted out of what shall be reported due to the plaintiff as aforesaid and upon the defendant Bridges, his paying unto the plaintiff, what the master shall certify to remain due to him as aforesaid, after such deduction, within three months after the master shall have made his report at such time and place as the master shall appoint; let the plaintiff reconvey the freehold estate comprized in the mortgage, and release the covenant therein, for the surrender of the copyhold estate, free and clear of all incumbrances done by him or them or those under whom he claims; and deliver upon oath all deeds and writings in his custody or power, relating to the mortgaged premises to the defendant Bridges, or to whom he shall appoint. But in default of the defendant Bridges, his paying unto the plaintiff what the master shall certify to remain due to him after such deduction as aforesaid,

(a) It should seem that of *late*, the usual decrees for taking an account of rents and profits of mortgaged premises, contain no directions for extending the inquiry to the rents and profits which *without the wilful default* of the accounting party might have been received: to authorize the register to insert such directions in the decree, an account to that extent, must form *specifically* a part of the relief prayed, and the bill must be so framed: where the *usual directions* for taking the account are prayed, the decree directs only an account of rents and profits received; and the master in carrying those directions into effect, restricts the account accordingly. An executor is chargeable for wilful default, if in forbearing the obligee, any loss is incurred.(a)

by the time aforesaid, the defendant Bridges, is from thenceforth to stand absolutely debarred and foreclosed of and from all equity of redemption, of, in, and to the freehold estate; and in that event, let the defendant Bridges surrender the said copyhold estate to the plaintiff and his heirs, or as he shall direct, free from any right or equity of redemption thereon; and for the better taking the accounts, before directed, the parties are to produce before the master upon oath, all books, papers and writings, in their custody or power relating thereto; and are to be examined upon interrogatories as the master shall direct, who in taking the said accounts, is to make unto the parties *all just allowances*, and refer it to the former master.

MOTIONS AND NOTICES.

A **MOTION** is in the nature of a petition, to the court by counsel, *ore tenus*, on instructions given by the solicitor for that purpose, either *of course*, where by a standing rule, or the known course of the court, the object of the application is to be granted without hearing the other party; or *special*, upon notice where the order applied for will be granted or denied, as the court sees fit, upon the weight and reason of the matters, on representation by counsel, and the necessity or justice of the order applied for appears, by the pleadings in the cause, or evidence *aliunde* offered to the court on the application.

On motions of course, the court will not hear any opposition; the order is granted upon the bare representation or suggestion of counsel, therefore a notice of motion is not necessary. These applications are usually for the same orders as may be applied for by petition at the rolls, on which the order is made of course; but if the order is obtained on a false suggestion or misrepresentation, the party to whose prejudice the order is obtained, may apply by motion to discharge the same, for irregularity, with forty shillings costs, giving a notice of the motion; (a) and there is no other manner of trying the irregularity or impropriety of the order complained of. *Motions of course* are made at the rolls, on the days in term, when the master of the rolls sits to hear causes, and in the vacation on the morning after term, when he sits to hear petitions. (b)

Of motions intended to be made otherwise than of course (which are termed special motions) a notice in writing must be served on the adverse party, or his clerk

in court, at least two days previous to the application intended to be made, and the service must be by delivering to, and leaving with the proper clerk in court, a true copy of the order, &c. *and shewing the original order* passed and entered at the time of service; it is otherwise irregular and void. (a) These two days of notice are calculated in the following manner: a motion intended to be made on Thursday, notice thereof must be served on the Tuesday previous or before; if the motion is intended to be made on Monday, (b) the notice must be served on the Friday previous, or any day before (Sunday not being considered as a day within the rule.) Notices of motion must be in writing, and an affidavit of the service thereof on the clerk in court, his agent, or in some cases the party in the cause, ought to be made and filed, and an office copy of the same had, to satisfy the court, on the motion being made, that proper notice thereof has been given; in case the parties to whom the notice thereof has been given should not appear.

The first and last days of term, and every Thursday in term, are days set apart for and appropriated to the hearing of motions, in exclusion of all other business; but motions of course, or such as will not take any great length of time in the discussion, are permitted to be made every day in term, at the rising of the court. The seal days appointed before and after every term, are likewise days especially set apart for motions. Although the seal should last three days, it is only a continuation of the seal-day. On cause or petition days, or other days after term, motions are not permitted to be made at rising of the court, as on cause days in term, the court will sometimes in pressing cases, give leave to move and appoint a day, and in extreme cases, always.

Where notice is necessary, every thing the party moves for should be expressed, for the court will not ordinarily extend the order beyond the notice, as where notice was that the plaintiff might be put into possession, and a receiver appointed; the court refused to order that nothing should be received by the defendant in the mean time, though the defendant did not appear. Where a notice is given to discharge an order for irregularity, costs are not given, unless mentioned in the notice of motion, and then the motion is made at the peril of costs.(a)

If a party gives notice of the same motion three times, without making it, he will not be allowed to move upon a fourth notice as of course; the other side may object to the motion, unless the costs of the former notices are paid. The production of the three former notices given, would be sufficient cause shewn; but it should seem that the right to costs must be founded upon a fourth application, which are liquidated at ten shillings, and must be paid in strictness, before the fourth notice is moved; and if it were a matter of importance, and of weight in the cause, and the fees given to counsel large, the court would probably refer the costs to a master for taxation.(b) A motion made on a false suggestion would be discharged for irregularity, with 40s. costs.(c)

Where by the absence of a counsel, who should have opposed a motion, the court thinks fit to put it off to a future day, the benefit of the former notice is ordered to be saved, so as the matter may be moved another time; (the order usually mentions a day certain; (d) and if affidavits are to be read, the order directs that such

(a) *Prac. Reg. Wy. Ed.* 287.

(b) 8 *Ves.* 316. 14 *Ves.* 151. *Prac. Reg. Wy. Ed.* 288.

(c) 3 *Atk.* 583.

(d) For the order, see *Hands' Chanc.* 12. 141.

affidavits as the party intends to make use of, be filed four days before; and in injunction causes not to disturb the plaintiff in the mean time. But it is no objection to a motion that the affidavit was filed only the day before; if it is an affidavit that cannot be answered, as upon an application to extend an injunction to stay trial in the court below, that the plaintiff cannot go to trial with safety till the answer comes in.(a)

And the purport of the notice should be attended to; for if the object of the motion involves any principal point in the cause, the court will not, even by consent, decide the merits of the cause upon a motion.(b)

A motion is not to be postponed, so as to affect the right to notice: as where an order to confirm a report *nisi* had been obtained, and the party at the last seal, (Saturday) obtained leave to move on the Monday to confirm the report absolutely; upon the ground, that the eight days which had not expired on the seal day, might be compleat. The *Lord Chanc.* as if taken by surprise, said, he ought not to have given that permission, and refused to make the order.(c) And a motion, *the day after term*, to dismiss for want of prosecution, on the usual certificate of no proceedings within three terms, of which the last was one, was refused.(d)

Notice of motion given by one not allowed to act as a solicitor is not good;(e) and notices in *pauper* causes must be signed by the clerk in court.(g)

And upon an application by motion for payment of money out of court, the accountant general's certificate

(a) 10 Ves. 46.

(b) 2 Bro. 366.

(c) 1 Ves. 600.

(d) 1 P. Wms. 522.

(e) 3 P. Wms. 104. Prac. Reg. Wy. Ed. 399,

(g) 17 Ves. 387.

of the money being paid into the bank, and also his certificate of the money being at the time of applying in the accountant general's hands must be produced.(a)

Lord Erskine, C. in pronouncing judgment in *Lord Shipbrooke v. Lord Hitchinbrooke*, observed, that he did not find there was *any precise or positive boundaries between motions and petitions*: as they are to be applied to carry into effect decrees and orders, so as to exclude all discretion in the court to grant or refuse them, according to circumstances. But that, generally speaking, *motions*, which have for their object to give effect to decrees and orders, should be confined to cases, where the order, which is to be made upon motion, arises out of *recent proceedings, concerning which there is no doubt*; for as the adverse party knows nothing but by the notice, containing only the names of the cause, and what is prayed of the court, the *proceedings ought to be recent and notorious*, so as that the adverse party may be supposed to be perfectly cognisant of all the steps and proceedings in the cause, as much as if at a greater expence they were recited in a petition. What cases are of this kind, and what may require the formality of a petition, reciting all the proceedings in a cause, is a matter obvious enough, in the application of the principle; but it is still a matter of discretion. And his lordship observed, that, *Lord Eldon* would not allow money to be paid out of court upon motion, as the recitals in a petition, which must be justified by the proceedings to warrant the drawing up the order, would always speak for themselves at any distance of time, or change of parties in the cause.(b)

The variety of shapes in which applications are made

(a) 1 Atk. 519.

(b) 13 Ves. 393. Hands' Chanc. 220. 224.

to the court by motion, founded upon the peculiar circumstances of each case, render it impracticable to state every possible form in which a notice of motion may be given. A selection of the most usual and ordinary forms of notices is introduced into this work, and with the preceding instructions, will be abundantly sufficient to enable a practitioner to conceive the shape in which any application by motion may be made to the court.

Lord Eldon, upon the appointment of the vice chancellor, added to the standing orders of the court the following:

Tuesday, 13th December, 1814.

Whereas it is expedient, in order to expedite the business of the court to order, as follows: I do therefore hereby order that every notice of motion to be made before his honour the vice chancellor, upon any matters relative to which his honour the vice chancellor is authorized (a) to make any order or orders, shall in future *express that the same is intended to be made before his honour the vice chancellor*; and I do order that such motions, relative to such matters as *in the notices thereof, are intended to be made* before his honour the vice chancellor, *shall be accordingly made before his honour the vice chancellor*; but this is to be *without prejudice to any motion* being made before his honour the vice chancellor, relative to any such matters as aforesaid, *the notice of which shall not have expressed such intention, if the parties shall consent* that such motion shall be so made; and in cases in which they shall so *consent*, I do further order, that such motion shall also be made before his honour, the vice chancellor, and this is also to be

(a) Vid. 53 Geo. 3. c. 24.

without prejudice to any motions being made before his honour the vice chancellor which the lord chancellor shall direct to be so made; and also to be without prejudice to the lord chancellor's making any orders upon motions which the lord chancellor may think fit to be made before him, although the notice of motion shall have expressed, that it was intended to be made before his honour the vice chancellor.(a)

(a) Ord. Canc. Bea. Ed. 484. 2 Ves. and Bea. 419,

NOTICES OF MOTION.



Notice of Motion that the Defendant may transfer Stock to the Accountant General of the Court.(a)

In Chancery.

Between John Lawrence, and others, Plaintiffs ;
and
George Wilson, and William
Johnson, and others, - Defendants.

Take notice, that this honourable court will be moved on Thursday next, or so soon after as counsel can be heard, that the said defendants George Wilson and William Johnson, may be ordered to transfer to the accountant general of this honourable court, in trust in this cause, the sum of 3,400*l.* consolidated three per cent. bank annuities, and the sum of 5,000*l.* four per cent. bank annuities admitted in the answer of the said defendants to be standing in the name of their testator, Stephen Lawrence, in the pleadings in this cause named, in the books of the governor and company of the bank of England; and also the respective sums of 1,862*l.* 6*s.* 10*d.* consolidated three per cent. bank annuities, and 605*l.* 4*s.* 2*d.* four per cent. bank annuities, likewise admitted by the said defendants to be standing in their names in the books of the said governor and company, and to have been purchased with part of the effects of the said testator. Dated this 6th day of June, 1816.

J. Williams, plaintiffs' solicitor.

To Mr. Radcliffe,
Defendants' clerk in court.

(a) For the order, see Hand's Chanc. 61. 64. 66.

Notice of Motion that the Master may make a separate Report of the Personal Estate, &c. in order to ground an Application to the Court for an Allowance for Maintenance of Infants.

In Chancery.

Between George Adams, and others, Plaintiffs;
and

Thomas Sutton, and others, Defendants.

Take notice, that his honour the vice chancellor will be moved on Thursday next, or so soon after as counsel can be heard, that Mr. Harvey the master to whom this cause stands referred, may be at liberty to make a separate report of the personal estate of E. F. deceased, the testator in the pleadings in this cause named, and of his debts, funeral expences, and legacies; and also what is proper to be allowed for the maintenance and education of the infant plaintiffs, pursuant to the decree made on the hearing of this cause.(a) Dated the 6th of June, 1816.

J. Williams, plaintiffs' solicitor.

To Mr. Radcliffe,
Defendants' clerk in court.

Notice of Motion that a Bill may stand dismissed for Want of Prosecution.

Between John Doe, Plaintiff;
, and

John Cox and James Dent, Defendants.

The defendants intend to move this honourable court,

(a) For the Order, see Hands' Chanc. 74.

Notice of Motion that the Defendant may produce a Record at the Hearing, and that the Plaintiff may examine *vive voce* to prove the same.

In Chancery.

George Eld,

Plaintiff ;

and

Benjamin Waters, and others, Defendants.

The plaintiff intends to move this honourable court on Tuesday next, the 24th day of January instant, or as soon after as counsel can be heard, that the defendant Waters may be ordered(a) to produce the *nisi prius* record of the issue directed in this cause, on hearing for further directions on the equity reserved ; and that plaintiff may be at liberty to examine one or more witnesses, *vive voce*, to prove the indorsement, dated the 4th day of August last, signed by the defendant, Thomas Waters, on the back of the said record ; and that the plaintiff may read the said record and indorsement, as evidence for him. Dated the 22d of January, 1816.

Thomas Rice, plaintiff's solicitor.

To Mr. Jackson,

Defendants' clerk in court.

Notice of Motion to produce a Deed at the Hearing of a Cause.

In Chancery.

Between Thomas Parry,

Plaintiff ;

and

John Williams, and others, Defendants.

The defendant John Williams, intends to move this honourable court on Friday next, being the 23d day of

(a) For the Order, see Hands' Chanc. 179.

January inst. or as soon after as counsel can be heard, that the plaintiff may produce at the hearing of this cause the settlement made on the marriage of John Williams, and Ann his wife, (late father and mother of the defendant, John Williams) bearing date the 20th day of May, 1768, and also the lease of the premises in question, bearing date the 4th day of June, 1769, granted to the defendant, Thomas Williams, by Walter Simonds, for 61 years. Dated the 21st of January, 1816.

Henry Hodgson, plaintiff's solicitor.

To Mr. Horne,
Defendants' clerk in court.

Notice that an Order for the Trial of an Issue may be enlarged, and for a special Jury and View of the Premises in Question.

In Chancery.

Between James Ramsden, Plaintiff;
and

Thomas Rawson, Defendant.

The plaintiff intends to move this honourable court on Thursday, the 10th day of March instant, or as soon after as counsel can be heard, that the order made on the hearing of this cause, bearing date the 23d day of January last, for trial of the issue between the parties therein mentioned, for the next Lent assizes, may be enlarged for the trial of the said issue, until the next Summer assizes; and that a special jury, and a view may be had of the premises before the trial of the said issue; and that it may be referred to the same master (to whom it was referred to settle the issue) to strike the said jury. Dated the 8th day of March, 1816.

Richard Jones, plaintiff's solicitor.

To Mr. Shaddick,
Defendant's clerk in court.

*Notice of Motion to amend Bill, so as not to
dissolve the Injunction already issued.*

In Chancery.

Between George Mason, Plaintiff;
and
John Murray, Defendant.

The plaintiff intends to move this court on Friday next, the 23d day of January instant, before his honour the vice chancellor, or as soon after as counsel can be heard, that he may be at liberty to amend his bill, by adding parties, amending defendant's office copy; and praying no further answer without prejudice to the injunction already obtained. Dated the 21st of January, 1816.

o John Allen, plaintiff's solicitor.

To Mr. Mortimer,
Defendant's clerk in court.

*Notice of Motion to enlarge Publication, and for
a Commission to examine, and that Plaintiff
may produce a Note of Hand at the Examination.*

In Chancery.

Between Robert Frampton, esq. Plaintiff;
and
James Knight, and others, Defendants.

The said defendants intend to move his honour the vice chancellor on Tuesday next, or as soon after as counsel can be heard, that publication in this cause may

be enlarged to the last day of Trinity term next, and that the said defendants may be at liberty to sue out a commission to examine their witnesses in the country, (directed to the same commissioners as are named in a commission heretofore sued out by the complainant) returnable without delay, and that the complainant may produce at the execution of the said commission, the note of hand in the bill mentioned to be given by the testator, James Forster, to the said complainant, and dated the 4th day of June, 1809, for the sum of nine hundred pounds, in order for the defendants to examine their witnesses touching the said note, as they shall be advised. Dated the 26th of April, 1816.

James Rice, solicitor for the defendants.

To Mr. Bicknell,
Plaintiff's clerk in court.

Notice to enlarge Publication, until Defendant
in a Cross Cause shall have answered the original Bill.(a)

In Chancery.

Between Robert Frampton, esq. Plaintiff;
and
William Knight, esq. and others, Defendants;
and
Between said William Knight, and others, Plaintiffs;
and
Robert Frampton, and others, Defendants.

The said William Knight, the defendant in the original cause, and plaintiff in the cross cause, intends to

(a) For the Order, see Hands' Chanc. 99.

move his honour the vice chancellor on Friday next, the 30th day of October instant, being the first seal before Michaelmas term, or so soon after as counsel can be heard, that publication in the original cause may be further enlarged, until a fortnight after the defendant in the cross cause shall have fully answered the said bill. Dated the 28th of October, 1816.

William Cholwich, solicitor for the
said William Knight.

To Mr. Fraser,
Clerk in court for the plaintiff.

Notice of Motion to retain Bill upon Payment of Costs out of Purse, &c.(a)

In Chancery.

Between William Braginton, Plaintiff;
and

Henry Bright, Defendant.

The plaintiff intends to move this court on Friday, the 9th day of December next, being the second general seal, that the bill in this cause may be retained upon payment of the costs out of purse on the dismissal thereof; and that the plaintiff may have a commission to examine his witnesses in the country, this vacation; and that publication may pass in this cause, the first day of next term, with liberty for the plaintiff to set down the cause for hearing in the mean time. Dated this 7th day of December, 1816.

W. Neale, solicitor for plaintiff.

To Mr. Cottrel,
Defendant's clerk in court.

Notice of Motion to lay out and invest the Balance paid in by a Receiver.(b)

In Chancery.

**Between Francis Skurray, and another, Plaintiffs;
and**

John Peach, and others, Defendants.

The plaintiffs intend to move his honour the vice chancellor on Tuesday, the 2d day of May next, or as soon after as counsel can be heard, that the sum of five hundred forty-six pounds six shillings and seven-pence three farthings, the balance of the receiver's final account, paid into the bank in the name and with the privity of the accountant general of this court, and placed to the account of this cause, Purse against Sheppard, may be invested in the purchase of bank three per cent. annuities, and transferred to the accountant general of this court, subject to the further order of this court. Dated the 30th of April, 1816.

Thomas Metcalf, solicitor for plaintiffs.

**To Mr. Baynes,
Defendants' clerk in court.**

Notice of Motion that a Solicitor may return a Decree to be passed and entered.

In Chancery.

**Between Robert Monksfield, and others, Plaintiffs;
and**

John Williams, esq. and others, Defendants.

The defendant John Williams, intends to move this court before his honour the vice chancellor on Tuesday

next, being the third seal after Michaelmas term, or so soon after as counsel can be heard, that Mr. Mainwaring, the plaintiff's solicitor, may forthwith return to Jacob Cross, esq. one of the deputy registers of this court, the decree made on the hearing of this cause, the 3d day of March, 1816, which was by him drawn up, in order that the said defendant may take a copy thereof, and that the same may be passed and entered. Dated the 12th of July, 1816.

C. Owen, defendants' solicitor.

To Mr. Bicknell,
Plaintiffs' clerk in court.

Notice of Motion, that a Plaintiff may make his Election, whether he will proceed in the Court of Chancery or the Court of Exchequer, where Bills are filed in each Court.(a)

In Chancery.

Between Edward Sambourne, esq. and	
another,	Plaintiffs;
and	
George Broadhurst,	Defendant.

The defendant intends to move this court on Tuesday next, the 10th day of this instant June, being the last seal, before Trinity term, or as soon after as counsel can be heard, that as two bills are filed against the defendant, for one and the same purpose, and on one and the same account, the one in this honourable court, as of the last

(a) For the Order, see Hands' Chanc. 57. And for the Practice, see ante, Title 'Election.'

Michaelmas term ; and the other in the court of Exchequer, at Westminster, as of Hilary term, 1810, that the plaintiffs may, within a week, make their election, in which court they mean to proceed ; and that in the mean time all further proceedings may be stayed. And that if the plaintiffs shall elect to proceed in this court, then that they may be restrained from proceeding in the court of Exchequer. But if the plaintiffs shall elect to proceed in the court of Exchequer, or in default of such election by the time aforesaid, then that the plaintiffs' bill may stand dismissed out of this court as against the defendant, with costs to be taxed ; and also the costs of this application. Dated the 6th of June, 1816.

Richard Arnold, defendant's solicitor.

To Mr. Tancred,
Plaintiffs' clerk in court.

Where a plaintiff had been put to his election to proceed at law or in equity, and a reference whether the suits were for the same matter, upon application to stay proceedings at law, *Lord Eldon* observed that a motion to put plaintiff to his election *was of course, without notice*, and if upon an application to discharge the order, it appears that they are not for the same matter, the court does not refer it to the master ; but if there is any difficulty in determining, then the reference is directed. And *all proceedings are stayed in both courts in the mean time.*(a)

(a) 3 Ves. and Bea. 1.

Notice of Motion for a new Trial.

In Chancery.

Between Robert Frampton, Plaintiff ;
And James Knight, Defendant.

and
Between James Knight, Plaintiff ;
And Robert Frampton, Defendant.

Robert Frampton, the plaintiff in the original cause, and the defendant in the cross cause, intends to move this court, before his honour the vice chancellor, on Thursday next, the 6th day of July instant, being the first general seal, or as soon after as counsel can be heard, that a new trial may be had at the next assizes, to be holden in and for the county of Dorset, of the issue directed by the decree, made on the hearing of these causes, the 24th day of January last ; and that these causes may keep their place in the paper for further directions appointed after last term. Dated the 4th of July, 1816.

Geo. Birch, plaintiff Frampton's solicitor,
To Mr. Smith,
Defendant's clerk in court,

Notice of Motion to adjourn a Cause.(a)

In Chancery.

Between Henry Sigby, Plaintiff ;
and

Charles Stuart, and others, Defendants.

The defendant, Charles Stuart, intends to move this honourable court on Thursday, the 14th day of July in-

(a) For the forms of different orders, see Hand's Chanc. 104, 5, 6.

stant, being the second general seal after Trinity term, or as soon after as counsel can be heard, that this cause may stand adjourned until after the first seal after next Michaelmas term. Dated the 12th day of July, 1816.

George Berwick, defendants' solicitor.

To Mr. Jackson,
Plaintiff's clerk in court.

**Notice of Motion by a Defendant for Payment
of his Costs after Answer to a Bill of Discovery.(a)**

In Chancery.

Between Elizabeth Hookers, Plaintiff;
and .

Richard Hughes, Defendant.

The defendant, Richard Hughes, intends to move the court on Monday next, the 18th day of February instant, being the first general seal, or as soon after as counsel can be heard, that the plaintiff may pay to the defendant his costs of suit, to be taxed by one of the masters of this court. Dated the 16th day of February, 1816.

C. Wellbank, defendant's solicitor.

To Mr. Bicknell,
Plaintiff's clerk in court.

(a) For the Order, see Hands' Chanc. 59.

Notice of Motion, that Plaintiff may produce Witnesses at his own Expence, or that the Depositions may be suppressed for Irregularity.

In Chancery.

Between Stephen Williams, esq.

Plaintiff;

and

Walter Thomas, esq. and others, Defendants.

The defendants intend to move this court on Wednesday next, being the second seal after Trinity term, or so soon after as counsel can be heard, that Thomas Eld, John Fox, and James Baynes, witnesses, already examined by the plaintiff in this cause, may be produced at the plaintiff's expence, to be cross-examined by the defendants, either on a commission issued for the examination of witnesses, or before one of the examiners of this court, as the defendants shall think fit, or that the depositions of such witnesses already taken, may be suppressed, the said witnesses having been examined by the plaintiff without having issued a subpoena to rejoin. Dated the 6th day of July, 1816.

John Adams, defendants' solicitor.

To Mr. Sturday,

Plaintiff's clerk in court.

Notice of Motion to examine *de bene esse*. (a)

In Chancery.

Between Charles Thompson,

Plaintiff;

and

David Edwards, and others, Defendants.

The plaintiff intends to move this court on Tuesday

(a) For the Order, see Hands' Chanc. 93.

next, the 3d instant, being the first general seal after Michaelmas term, or so soon after as counsel can be heard, that he may be at liberty to sue out a commission to examine Cornelius Taylor, Joseph Williams, and George Richards, as witnesses in this cause, *de bene esse*. And that the clerk in court for the defendants, Mark Davis, John Boteler, and William Shepherd, may in four days join and strike commissioners' names, with the plaintiff's clerk in court after notice, or in default, that the plaintiff may be at liberty to sue out such commission directed to his own commissioners. Dated the 30th of November, 1816.

Geo. Townsend, plaintiff's solicitor.

To Mr. Vanhuysen,
Defendant's clerk in court.

Notice of Motion to be at Liberty to pay Money into Court.

In Chancery.

Between Robert Johnson, Plaintiff;
and
John Watts, and others, Defendants.

The defendant, John Watts, intends to move this court on Thursday next, the 26th day of January instant, or as soon after as counsel can be heard, that he may be at liberty to pay the sum of 3000*l*. further part of the sum of 18,000*l*. in the decree in this cause mentioned, into the bank, with the privity of the accountant general of this court, to be placed to the credit of this cause; and that the same, when so paid in, may be laid out in the purchase of three per cent. bank annuities, in the name, and

with the privity of the accountant general, in trust in this cause. Dated the 24th day of January, 1816.

Francis Gregg, defendant Watts's solicitor.

To Mr. Mills,

Plaintiff's clerk in court.

Notice of Motion to lay out Dividends arising from Cash in the Bank, in a Cause, and to lay out the future Dividends as they arise.(a)

In Chancery.

Between James Gomme, and others, Plaintiffs;
and

George West, and others, Defendants.

The plaintiffs intend to move this court on Wednesday next, the 3d instant, being the first seal after Trinity term, or as soon after as counsel can be heard, that the sum of 1229*l.* 14*s.* 1*d.* cash in the bank, in this cause, being dividends due 5th of January last, on 16,453*l.* 10*s.* bank three per cent. annuities, standing in the accountant general's name, in trust in this cause, together with the dividends accruing, due thereon, the 5th instant; and all future dividends, as and when they shall amount to a competent sum, may be by the said accountant general laid out in the purchase of bank three per cent. annuities, in the name and with the privity of the said accountant general, to the credit of this cause. Dated the 1st of July 1816.

William Hands, plaintiffs' solicitor.

To Mr. Jackson,

Defendants' clerk in court.

(a) For the Order, see Hands' Chanc. 228, 229.

Notice of Motion, that the Accountant General,
by Sale of Stock and Cash in the Bank, may
pay Principal, Interest, and Costs, due to a
Mortgagee.(a)

In Chancery.

Between William Roberts, esq,	Plaintiff;
and	
Henry Addington, Joseph Ni-	
cholls, and others,	Defendants.

The defendant, Nicholls, intends to move the court on Monday next, being the fourth general seal after Hilary term, or as soon after as counsel can be heard, that so much of 17,550*l.* 17*s.* three per cent. bank annuities, may be sold, as with the sum of 526*l.* 10*s.* 6*d.* the cash in the bank, standing in the name of the accountant general, and placed to the credit of this cause, will be sufficient to raise the several sums of 11,166*l.* 15*s.* 4*d.* and 40*l.* 10*s.* 10*d.* reported due to the defendant, Nicholls, for principal, interest, and costs, on the 23d of January last, together with the sum of 79*l.* 19*s.* 6*d.* for seventy-three days subsequent interest of 8000*l.* principal money, to the 6th day of April next, making together 11,287*l.* 5*s.* 8*d.* and that the said sum of 11,287*l.* 5*s.* 8*d.* when received, may be paid to the said defendant, Joseph Nicholls, and that the accountant general may draw for the same, according to the form prescribed by act of parliament, and the general rules and orders of this court. Dated the 30th of March, 1816.

Geo. Adams, solicitor for defendant Nicholls.

To Mr. Wainewright,
Plaintiff's clerk in court.

Notice of Motion for laying out Cash in the Bank, and for enlarging the Time for paying in Money, where the Time has lapsed, in order to issue Process to enforce the Payment.(a)

In Chancery.

Between John Fuller, esq. and others, Plaintiffs;
and

Ann Pretty, and others, Defendants.

The plaintiff and defendant, John Duke, intends to move this court on Tuesday next, the 17th of July instant, being the third general seal, or as soon after as counsel can be heard, that the sum of 185*l.* 12*s.* 4*d.* cash in the bank, in the name of the accountant general, in trust in this cause, under the title, Duke against Pretty, may be invested in the purchase of old South Sea annuities, in the name, and with the privity of the accountant general, to be placed to the credit of this cause, under the title of Duke against Pretty, and that the said accountant general may declare the trusts thereof, subject to the further order of this court; and that the time for the said Mr. Harvey Combe, the receiver, paying in the said sum of 300*l.* into the bank, pursuant to the order of the 7th day of June last, may be enlarged for three weeks from this time; and that the same, together with the dividends that shall be then due, and received, and placed to the credit of this cause, under the said title Duke against Pretty, may be placed out in like manner, in the purchase of old South Sea annuities, in the name and with the privity of the accountant general, subject to the further order of the court. Dated the 15th of July, 1816.

Joseph Allen, solicitor for plaintiff
and defendant Duke.

To Mr. Mills,
Clerk in court for defendants.

(a) See Orders, Hands' Chanc. 61. 4. 6.

Notice of Motion, that Plaintiff may be at liberty
to call in and sue for Money due to a Testator,
the Defendants (the Executors) refusing to act.

In Chancery.

Between Henry Woolnough, and wife,
and Thomas Ellridge, Plaintiffs;
and
John Scroope, and others, Defendants.

The plaintiffs, Henry Woolnough and wife, and Thomas Ellridge, intend to move this court on Thursday, the 29th of April instant, or as soon after as counsel can be heard, that they may be at liberty to call in and sue for the monies due to the estate of John Ellridge, esq. deceased; and for that purpose, that they may be at liberty to make use of the names of the said John Scroope, Samuel Creswick, and John Cossius, indemnifying them, and that the said John Scroope, Samuel Creswick, and John Cossius may deliver to them the several deeds, writings, and securities, on which any money is due to the said John Ellridge's estate, to enable them to call in and sue for the same. Dated the 27th of April, 1816.

David Thomas, solicitor for plaintiffs.

To Mr. Wainewright,
Defendants' clerk in court.

Notice that the Depositions taken in a Cause,
may be read in Evidence at the Trial at
Law.(a)

In Chancery.

Between John Alsop, and another, Plaintiffs;
and

Robert Vigors, and others, Defendants.

Take notice, that the plaintiffs intend to move this honourable court on Monday next, the 25th instant, being the last general seal, or so soon after as counsel can be heard, that the plaintiff may be at liberty to read the pleadings, proceedings, and depositions of defendants' witnesses taken in this court, in a cause of Alsop v. Vigors, instituted in 1791. And also the depositions of Jane Whittington, the wife of Mr. William Whittington, of the Swan Inn at Stevenage in Hertfordshire, aged seventy-five, and of Richard Whittington, late hostler, at the said Inn, aged eighty-one and upwards. And of such other of the plaintiffs' witnesses taken in this cause, at the trial of the issue directed in this cause, pursuant to the decretal made, &c. as shall be proved at the trial to be dead or unable to attend. Dated 23d July, 1816.

Richard Cracraft, plaintiffs' solicitor.

To Mr. Sturdy,
Defendants' clerk in court.

Notice to discharge an Order for Irregularity.(b)

In Chancery.

Between Tobias Middleton, Plaintiff;
and

Thomas Holmes, and others, Defendants.

The defendant, Thomas Holmes, intends to move his

(a) For the Order, see Hands' Chanc. 106.

(b) For the Order, see Hands' Chanc. 28.

honour the Vice-Chancellor, on Thursday next, the 14th day of July instant, being the second general seal, or so soon after as counsel can be heard, that the order made in this cause, bearing date the second day of this instant July, may be discharged for irregularity, with costs to be taxed by one of the masters of this court. Dated the 12th of July, 1816.

James Short, defendants' solicitor.

To Mr. Wainewright,
Plaintiff's clerk in court.

Notice of Motion to discharge an Order for Irregularity, expressing the *gravamen* in the Notice.

In Chancery.

Between John Becher, esq. and others, Plaintiffs ;
and
Rose Beckford, Defendant.

The defendant intends to move this court on Thursday next, being the second general seal, or as soon after as counsel can be heard, that the order obtained by the plaintiffs, dated the 22d of November last, for amending the plaintiffs' bill, *and whereon they have struck out Benjamin Fanner from being a plaintiff*, may be discharged, and that the defendant may have a week's time to join and strike commissioners' names in this cause. Dated the 7th of December, 1816.

H. Kensit, defendant's solicitor.

To Mr. Mills,
Plaintiffs' clerk in court.

Notice of Motion, that an Order to amend may be discharged, and that the Bill may be dismissed with Costs, for want of Prosecution.

In Chancery.

**Between Thomas Penn, Plaintiff;
and**

John Bond, Defendant.

Take notice that this honourable court will be moved before his honour the Vice Chancellor on Tuesday, the 29th day of June instant, being the first general seal after Trinity term, or so soon after as counsel can be heard, that the order made by this honourable court in this cause, on the 28th day of May last, whereby it was ordered, that the plaintiff should be at liberty to amend his bill, upon payment of 20s costs to the said defendant, or his clerk in court, in respect thereof, may be discharged, and that the bill may be dismissed, for want of prosecution, with costs, to be taxed by one of the masters of this court. Dated this 26th day of June, 1816.

Parnther and Druce, defendant's solictors.

**To Mr. Jackson,
Plaintiff's clerk in court.**

**Notice of Motion for Transfer and Payment of
Bank Annuities and Cash to Creditors by the
Accountant General.**

In Chancery.

Between the Rev. Andrew Grant, Clerk, and
Nathaniel Gosling, Plaintiffs;

and

Robert Leaper Percy, and Grace his
Wife, late Grace Evans and
others, Defendants.

This honourable court will be moved on Wednesday the 14th inst. being the first general seal after Trinity term, or so soon after as counsel can be heard on the part of the plaintiffs, that the 3430*l.* 10*s.* 5*d.* bank three per cent. annuities, standing in the name of the accountant-general of this court, in trust in this cause, and the sum of 644*l.* 16*s.* 7*d.* in cash, now remaining in the bank, to the credit of this cause, which annuities and cash have arisen from the sales of the leasehold estates of the testator, Thomas Evans, in the pleadings named, or from other parts of his personal estate, may be respectively transferred and paid to the plaintiffs, in further diminution of the debt due to them from the estate of the said testator, Thomas Evans; and that the said 3430*l.* 10*s.* 5*d.* bank three per cent. annuities, together with a sum of 330*l.* 15*s.* 5*d.* new South Sea annuities, transferred to the said plaintiffs by the said accountant general, on the 25th day of August, 1815, pursuant to an order made in this cause, dated the third day of August, preceding, may be respectively taken by the said plaintiffs, according to the price or value of the said annuities respectively, on the respective days of transfer thereof, and go in reduction of so much of their said debt. Dated the 12th of July, 1816.

H. Kensit, plaintiffs' solicitor.

Notice of Motion by a Plaintiff, upon his attaining 21, that the Accountant General may transfer and pay Stock and Cash in the Bank.(a)
In Chancery.

Between William Harford, esq. Plaintiff;

, and

Robert Brownton, esq. and others, Defts.

The plaintiff, having attained his age of 21 years, intends to move this court on Thursday, the 10th day of June instant, or so soon after as counsel can be heard, that the accountant general may be directed to transfer to the plaintiff, for his own use, the sum of £75,000 four per cent. annuities, £1000 per annum share or interest in the capital consolidated long annuities, 1762, transferrable at the bank of England, and £10,006 capital East India annuities, standing in the name of the testator, Francis Baltimore, esq. deceased, at the time of his death, part of his residuary personal estate, and which were transferred by the decretal order of the court, dated the 24th of January, 1791, into the name of the said accountant general, by the defendants, Thomas Edwards and William Chrisp, the executors, in trust, in this cause; and that the said accountant general may be also directed to pay unto the plaintiff all interest and dividends arising and accruing on the said several stocks until the transfer thereof, together with the sum of 4300*l.* 3*s.* 8*d.* cash in the bank, standing in his name. Dated the 8th of June, 1816.

William Windale, plaintiff's solicitor.

To Mr. Mills,
Defendants' clerk in court.

(a) Lord Eldon, C. would not allow Money to be paid out of Court, upon Motion, as the Recitals in a Petition, would always speak for themselves. 13 Ves. 394. per Lord Erskine, C. For the Order, see *Hands*, Chanc. 220. 4.

Notice of Motion, that the Master may make a separate Report of what is due to a Mortgagee, for Principal, Interest, and Costs.

In Chancery.

Between William Robinson and others, Plaintiffs;
and

Henry Harrington, Thomas Carew, and others, - Defendants.

The defendant, Thomas Carew, intends to move this court on Thursday next the 3d of July instant, or so soon after as counsel can be heard, that John Ord, esq. the master to whom this cause stands referred, may make a separate report of what is due to him as executor of John Carew, esq. deceased, for principal, interest, and costs on the mortgage in the pleadings mentioned, to the said John Carew, and for the costs of the said Heatly Carew. Dated the 1st day of July, 1816.

Edward Bowman, defendant Carew's solicitor.

To Mr. Mortimer,
Plaintiffs' clerk in court.

Notice of Motion for Payment of Principal, Interest, and Costs, due to Mortgagees by Sale of Stock, standing in the Accountant General's Name, the mortgaged Premises being sold, and the Money paid into the Bank.(a)

In Chancery.

Between William Robinson, esq. Plaintiff;
and

Henry Harrington, and others, Defendants.

The plaintiff intends to move this court before his honor the vice chancellor on Thursday the 28th day

(a) For the Order, see Hands' Chanc. 198, 9,

of April instant, or as soon after as counsel can be heard, that the accountant general may sell so much of the 226*l.* 17*s.* 8*d.* bank three per cent. annuities, standing in his name, 'in trust in this cause, as together with the sum of 303*l.* 16*s.* 9*d.* cash in the bank, will raise sufficient to answer the several purposes hereafter mentioned; and that the accountant general may draw on the bank for the sum of 636*l.* 5*s.* 8*d.* payable to Mr. Stivered Plomeley, and the sum of 52*l.* 6*s.* 9*d.* payable to Mrs. Frances Wall, so much being reported due to them respectively, for principal and interest; and that the said Stivered Plomeley may forthwith deliver the possession, and the several leases of the premises granted to him by the defendant Harrington to Cæsar Hawkins, esq. the purchaser, and may procure satisfaction to be acknowledged upon the records of the several judgments entered up against the said defendant Harrington, by Thomas Appleton, Richard Jolleff, and the said Frances Wall, or may assign the said leases, and procure the said judgments to be assigned to Cæsar Hawkins, esq. the purchaser of the said estate, or as he shall direct; and that it may be referred to the master to take an account of the rents and profits received by the said Stivered Plomeley, of the premises demised to him subsequent to the account thereof set forth in his report of the 22d day of March last, and to tax the said Stivered Plomeley his costs; and that the balance of such account, after deducting such costs, when taxed, be paid by the said Stivered Plomeley into the bank, in the name of the accountant general; and that the master may tax Mr. Richard Helsam his costs, and that the accountant general may draw on the bank for the same when taxed, payable to his solicitor; and that the accountant general may draw on the bank for the sum of 273*l.* 10*s.* 1*d.* reported due to him for principal and interest, payable to the said Richard Helsam; and the said Richard Helsam may forthwith deliver up the possession and the leases of the premises granted to him by the de-

defendant Harrington to Cæsar Hawkins, esq. the purchaser, or may assign such leases as he shall direct; and that the accountant general may draw on the bank for the sum of 70*l.* 3*s.* 11*d.* payable to Thomas Bold and Joseph Nicholls, assignees of Thomas Naish, so much being reported due to them for principal, interest, and costs; and that they may deliver up or assign the several reversionary leases granted by the defendant Harrington, to the said Mr. Naish, to Cæsar Hawkins, esq. the purchaser, or as he shall direct. Dated this 21st day of April, 1816.

James Blake, solicitor for the plaintiff.

To Mr. Mortimer,
Defendants' clerk in court.

Notice of Motion to rectify Minutes. (a)

In Chancery.

Between William Gough, Plaintiff;
and
James Scarlett, Defendant.

The plaintiff intends to move this court on Friday next, the 3d day of March instant, being the third general seal, or so soon after as counsel can be heard, that the minutes of the order made on the hearing of this cause the 25th day of January last, may be rectified, by striking out the words, "but such foreclosure is to be subject to the mortgage mentioned in the said defendant's answer to have been made by him of the equity of redemption of the said mortgaged premises, to John Price, for securing the sum of £450 and interest." Dated the 1st of March, 1816.

Richard Arnold, plaintiff's solicitor.

To Mr. Wainewright,
Defendant's clerk in court.

(a) For the Order, see Hands' Chanc. 120.

Notice of Motion to rectify Minutes of a Decree or decretal Order.

In Chancery.

Between Rowland Barclay, esq. Plaintiff;
and

Richard Sharp, esq. and others, Defendants.

Take notice, that his honour the vice chancellor, will be moved on the part of the defendants on Friday, the 25th day of February instant, at the rising of this court, or as soon after as counsel can be heard, that the minutes of the decree, made in the said cause by the right honourable the master of the rolls, on the 8th of February instant, may be altered or varied, by striking out the whole of the said minutes between the words "as taxed," and the words "in that case made and provided," and inserting in lieu thereof the words and directions following, that is to say, "and let the defendants lay out " and invest the residue of the said principal sum of " £2000 in their names, or in the names of the survivor, " upon government or other public securities, or upon " lands by way of mortgage, to be approved by the " plaintiff, and stand possessed of the said funds or securities, upon trust to pay unto, or to permit the " plaintiff and her assigns to receive and take the interest " or dividends thereof, to her own use and benefit during " her life; and upon her decease stand possessed of the " said funds or securities, upon such trusts as by the said " indenture of the 1st day of July, 1810, are declared " concerning the same, after the decease of the survivor " of the plaintiff, and her late husband David Barclay, " or such of the said trusts as are now subsisting and " capable of taking effect." Dated the 22d of February, 1816.

Benj. Carter, defendant's solicitor.

To Mr. Shaddick,
Plaintiff's clerk in court.

*“ the several loans advanced by him as aforesaid, and
 “ in procuring transfers and assignments of the debts
 “ of the said defendants discharged by him to this time,
 “ to be taxed and settled by the master, and reserve the
 “ consideration of subsequent costs, and continue the
 “ reservation by the decree of further directions, until
 “ after the master shall have made his report ; and let any
 “ of the parties be at liberty to apply to this court as they
 “ shall be advised.” Dated the 14th of February, 1816.*

To Mr. Horne,
 Defendants' clerk in court.

F. Douse,
 Plaintiff's solicitor.

Notice of Motion by a Solicitor, for Payment of Costs out of Money paid into Court to answer Costs.

In Chancery.

Between George Price Spiller, esq. Plaintiff;
 and

Rose Beckford and others, Defendants.

Mr. Joseph Letch (late solicitor for the plaintiff, George Price Spiller, in this cause) intends to move his honour the vice chancellor on Saturday next, being the fourth and last general seal, or as soon after as counsel can be heard, that the sum of £100 paid into the bank by the said plaintiff, in trust in this cause, and subject to the further order of this court, as a deposit to answer the costs occasioned by the taxation of the bills of fees and disbursements of the said Joseph Letch separately, and of him and Mr. John Blake, (his late partner) jointly, (and which costs of the said Joseph Letch separately, have been taxed at the sum of 103*l.* 3*s.* and the costs of the said Joseph Letch and John Blake have been taxed at the

sum of 69*l.* 19*s.* 2*d.* making together the sum of 173*l.* 2*s.* 2*d.*) may be paid to the said Joseph Letch, the said John Blake consenting thereto; and that the accountant general of this court may be directed to draw upon the bank for the same, with the usual directions; and that the said plaintiff may pay to the said Joseph Letch the sum of 73*l.* 2*s.* 2*d.* residue of the said 173*l.* 2*s.* 2*d.* the said John Blake also consenting thereto; and that the said plaintiff may pay to the said Joseph Letch the costs occasioned by this application. Dated this 13th day of March 1816.

To Mr. Vanheythuysen,
Plaintiff's clerk in court.

**Notice that the Master may review the Taxation
of a Bill of Costs.(a)**

In Chancery,

Between Anthony Rhudde, esquire, Plaintiff;
and

William Bogdani, and others, Defendants.

The defendant Bogdani intends to move this court on

(a) The regular practice is by petition for leave to except to the report of costs; the application by motion seems to be of modern date; where the items of costs are only one or two, or may be reduced to one point, it would be advisable to try an application by motion, and the court has of late entertained motions of this nature; it is more expeditious, and much less expensive than by petition, and should be preferred, if the court can be prevailed upon to decide, and to order the master to review the taxation as to the item specified, and in any event if the court hears the motion from what passes upon the argument, whether to pursue the matter further or not, the solicitor must exercise his discretion.

Thursday the 23d instant, or as soon after as counsel can be heard, that Mr. Stratford may be directed to review the taxation of Mr. Cheatham the solicitor's bill of fees, &c. in respect to a charge of 64*l.* 12*s.* 8*d.* for his journey and expence from Uttoxeter to London, and back again to attend the hearing of this cause, and an item of two guineas charged for expediting the entry of the decree in the register office. Dated the 20th January, 1816.

To Mr. Mortimer,
Plaintiff's clerk in court.

Miles Walker,
Defendants' solicitor.

Notice of Motion to refer it back to the Master, to compute subsequent Interest on a Mortgage to tax subsequent Costs, and to take the subsequent Account of Interest, and to appoint a new Time and Place for Payment.

In Chancery.

Between Thomas Brewer, and another, Plaintiffs;
and

John Bridges, and others, Defendants.

The defendant, John Bridges, intends to move this court before his honour the vice chancellor on Friday, the 18th day of December instant, being the last general seal, or as soon after as counsel can be heard, that it may be referred back to the master to compute what is due for subsequent interest on the mortgage in the pleadings mentioned, from the foot of the report made in this cause, the 9th day of December, 1815, and to tax the plaintiffs, and Mr. John Delabere, their assignee, their subsequent costs; and to take the subsequent account of rents of the mortgaged premises received by the plaintiffs, or Mr. John Delabere, their assignee, from the foot of the said report, and appoint a new time and place for the de-

pendant, John Bridges, to pay what shall be reported due.

Dated 15th December, 1816.

William Windale, solicitor for defendants.

To Mr. Horne,
Plaintiffs' clerk in court.

Notice of Motion to discharge Order for *Ne
Exeat Regno.*(a)

In Chancery.

Between Edward Nicholas, and others, Plaintiffs;
and

Thomas Duncombe, and others, Defendants.

The defendant, Thomas Duncombe, intends to move this court, on Friday next, the 10th day of March instant, being the third general seal, or so soon after as counsel can be heard, that the order made in this cause the 26th of February last, for issuing a writ of *ne exeat regno* against the defendant, Thomas Duncombe, until answer and further order, and for marking the same for £7000 may be discharged. Dated the 8th of March, 1816.

George Townsend, defendants' solicitor.

To Mr. Baynes,
Plaintiffs' clerk in court.

(a) For the Order, see Hand's Chanc. 50.

Notice of Motion 'to discharge Order for *Ne Exeat Regno*, and to deliver up the Bail Bonds taken thereon upon the Defendant's Arrest.

In Chancery.

Between John Morgan, Plaintiff;
and
Walter Williams, Defendant.

The defendant, Walter Williams, intends to move his honour the vice chancellor, on Tuesday next, the 10th day of May instant, or so soon after as counsel can be heard, that Thomas Bell and John Thomas Thorpe, esqrs. sheriffs of London, may forthwith deliver to him, the said Walter Williams, two several bonds entered into by him, the said Walter Williams, together with Daniel Williams, Samuel Peach, and William Gabittas, his sureties, each bearing date the 7th day of April last; one of such bonds to them the said sheriffs, and the other of such bonds to the right honourable sir William Grant, knight, master of the rolls, in consequence of a writ of *ne exeat regno* being issued out against him, the said Walter Williams, and marked for the sum of £2000. Dated the 8th day of May, 1815.

Geo. Richards, defendant's solicitor:

To Mr. Shaddick,
Plaintiff's clerk in court.

Notice of Motion for Commitment for a Contempt. (a)

In Chancery.

Between Dame Frances Cann, widow, Plaintiff;
and

Sir Robert Cann, bart. and others, Defts.

Take notice, that the plaintiff intends to move this court on Wednesday, the 3d of July next, being the last day of the term, or as soon after as counsel can be heard, that the defendant, Sir Robert Cann, baronet, and Sarah Farley, may stand committed to the prison of the Fleet, for printing and publishing an advertisement in the Bristol Journal, (entitled the Bristol Journal, printed by S. Farley, in Castle-green, where advertisements are taken in,) of the 25th day of May last, in the words, or to the effect following: "In the press, and speedily to be published, the answer in chancery of Sir Robert Cann, bart. to the suit and attempt of his good step-mother, the widow lady Cann, of Clifton, to disinherit and strip him of his late father's estate, though the only son and heir of that ancient house;" and that the said defendant, Sir Robert Cann, and the said Sarah Farley, may be restrained from printing, publishing, or vending the said answer. Dated the 18th day of June, 1748.

Joseph Blissett, plaintiff's solicitor.

To the above-named defendant,
Sir Robert Cann, and also to Sarah Farley.

(a) *Lord Hardwicke*, upon hearing counsel at great length, made an order for the commitment. In *Purcel v. M'Namara*, *Lord Erskine*, C. refused to commit the defendant in a similar case, attended with very aggravating circumstances; but in a subsequent case, *Ex parte Crowe*, he committed.

NOTICES.

Notice to discharge Order, and to liberate a Party committed for Contempt of Court.

In Chancery.

Between Dame Frances Cann, widow, Plaintiff;
and

Sir Robert Cann, and others, Defts.

The defendant Sir Robert Cann, intends to move this honourable court on Thursday next, the 12th day of July instant, or as soon after as counsel can be heard, on the behalf of the said Sir Robert Cann, and Sarah Farley, that the order made in this cause, dated the 3d day of July instant, so far as relates to the said defendant, Sir Robert Cann, being examined upon interrogatories as to the contempt in the said order mentioned, may be discharged; and that the said Sarah Farley may be discharged out of the prison of the Fleet, to which she hath been, by virtue of the said order, committed for her contempt in the said order mentioned. Dated the 8th of July, 1748.

William Neale, defendant's solicitor.

To Mr. Blissett,
Plaintiff's clerk in court.

Notice that an Executor may pay the Arrears of an Annuity, and for Appointment of a Receiver.

In Chancery.

Between Elizabeth Field,

Plaintiff;

and

Pittman Soandant, and others, Defendants.

The plaintiff intends to move this court on Monday

next, the 18th instant, being the first general seal after Hilary term, or so soon after as counsel can be heard, that Dionysius Bradley, the executor, may pay to the plaintiff the sum of 72*l.* 15*s.* received by him of William Nicholls, the tenant of Beely Farm, in the pleadings mentioned, in part and on account of the arrears of the plaintiff's annuity of £30; and that a receiver may be appointed of the real and personal estates of John Field, clerk, the plaintiff's late husband, in the pleadings in this cause named; and that the tenants of the said estates may attorn, and pay their rents to such receiver. Dated the 12th of February, 1816.

Thomas Smith, plaintiff's solicitor.

To Mr. Hill,
Defendants' clerk in court.

Notice of Motion for the Appointment of a Receiver, and that the Executor of the late Receiver may pass the Account, and pay the Balance.

In Chancery.

Between Theophilus Daubuz, John Hurst,
and Daniel Fox, Executors of
John Hart, deceased, - - - Plaintiffs;
and
Richard Peters, Executor of Frances
Peters, and others, . - - Defendants.

By original bill, and bills of revivor, and supplement.

Take notice, that the plaintiffs, Daubuz, Hurst, and Fox, intend to move this honourable court on Wednesday

next, being the third general seal after Hilary term, or as soon after as counsel can be heard, that Ann Burnell, the widow and executrix of John Burnell, deceased, the late receiver of the estates of^o sir William Morton, deceased, in question in this cause, may forthwith pass the accounts of the said John Burnell, her late husband, before Joseph Jekyll, esq. one of the masters of this court, to whom this cause stands referred, from the foot of the said John Burnell's last account, and pay the balance in her hands to the several parties entitled to receive the same respectively under the several orders made in this cause; and that it may be referred to the master to appoint a proper person to be receiver of the rents and profits of the freehold and leasehold estates, late of the said sir William Morton, in the room of the said John Burnell, deceased, and allow him a salary for his care and pains herein; such person so to be appointed receiver, first giving security to be approved of by the said master, and taken before a master extraordinary in the country, if necessary, duly and annually to account for what he shall so receive; and that such receiver so to be appointed, do pay and apply the balances of his accounts of the rents and profits of the said freehold and leasehold estates, from time to time, unto and among the several parties entitled to receive the same, according to the said former orders. Dated the 8th of March, 1816.

John Hunt, solicitor for the plaintiffs,
Daubuz, Hurst, and Fox.

To Mr. Mills,
Defendants' clerk in court.

Notice of Motion that a Receiver may forthwith pass his Accounts, or be discharged, and a new Receiver appointed.

In Chancery.

Between Rich. Sutton, esq. and Oxenbridge

Harwood, Plaintiffs;

and

George Wynne, and others, Defendants.

The defendant, George Wynne, intends to move this court on Friday next, the 24th day of January instant, that Mr. Daniel Fox, the receiver in this cause, may bring in and pass before Mr. Stratford, his account for the said estate, for the years ending at Lady-day, 1811, and 1812, on or before the first day of next Easter term; or that in default thereof the said receiver may be discharged from his said receivership; and that it may be referred to the said Mr. Stratford, to appoint another receiver in his room, with the usual directions. Dated the 20th of January, 1816.

Branch Fox, defendants' solicitor.

To Mr. Sturdy,

Plaintiffs' clerk in court.

Notice of Motion to discharge a Receiver, and for the Appointment of a new Receiver.

In Chancery.

Between Thomas Dake, and others, Plaintiffs;

and

James Gedge, and others, Defendants.

The plaintiff, Thomas Dake, intends to move this court

before his honour the vice chancellor, on Tuesday, the 25th day of this instant July, being the last general seal, or so soon after as counsel can be heard, that Mr. James Fox, the receiver of the rénts and profits of the real estates in question in this cause, may be restrained from receiving any more of the rents and profits of the said real estates, and may be discharged from being receiver; and that he may forthwith pass his accounts before Mr. Steele, the master, to whom this cause stands referred, and may immediately pay the balance that shall appear to be remaining in his hands into the bank, in the name, and with the privity of the accountant general of this court, to be placed to the credit of the plaintiffs in this cause; and that the said master may be directed to charge the said receiver with interest on such balances as shall appear from time to time to have remained in his hands, and that the same, as well as all other sums which shall be hereafter paid into the bank, to the credit of the plaintiffs in this cause, may be placed out in South Sea annuities for the plaintiffs' benefit; and that it may be referred to the said master, to approve of a proper person to be receiver of the said estate, instead of the said Mr. James Fox, with the usual directions. Dated the 21st of July, 1816.

Eliab Harvey, plaintiffs' solicitor.

To Mr. Tancred,
Defendants' clerk in court;
and to Mr. James Fox, the receiver.

**Notice of Motion to appoint a Receiver of a
Composition in Lieu of Tythes.**

In Chancery.

**Between the Rev. Morgan Price, and others, Plaintiffs ;
and**

George Williamson, and others, Defendants.

The plaintiff intends to move this court on Tuesday, the 8th of March instant, or so soon after as counsel can be heard, that for the preservation of such right as the plaintiff is, at all events entitled to, a receiver may be appointed to receive from the defendants the arrears of the composition of 6d. in the pound, on the rack-rent stated by the defendants' plea and answer to the plaintiff's bill, to have been paid to Mr. Jones, the former vicar of the parish in the bill mentioned, and insisted on by them to be due to the plaintiff in lieu of tithes in kind, and also to receive the said growing and future composition; and that the same may be paid into the bank in the name of the accountant general of this court, in trust in this cause, subject to the further order of this court, and without prejudice to any matters in dispute between the parties, except that the plaintiff hereby consenting, in case this honourable court shall not decree the plaintiff entitled to tithes in kind over the whole parish, that such payments shall be considered as made in lieu of the modus insisted on by defendants, and no account of such modus shall be directed. Dated this 4th day of March, 1816.

Joseph Bicknell, clerk in court for the plaintiff.

this court on Thursday, the 9th of this instant February, that the recognizance, bearing date the 4th day of July, 1799, entered into by the said George Lambe, and Richard Shute, and Robert Haywood, as his sureties to the right honourable sir Richard Pepper Arden, knight, then master of the rolls, and Peter Holford, esq. one of the masters of this court, in the penalty of £1400 may be vacated: and for that purpose, that the proper officer may attend his honour the master of the rolls, with such recognizance. Dated the 7th of February, 1816.

Geo. Jackson, clerk in court for the said receiver.
To Mr. Hill, Mr. Baynes, and Mr.

Wainewright, clerks in court for
the plaintiffs and defendants.

Notice that Depositions taken under a Commission for Examination of Witnesses may be filed with the Six Clerk, for safe Custody.

In Chancery.

Between Job Brown,	Plaintiff;
and	
Henry Mingay,	Defendant.

The plaintiff intends to move this court on the 23d

By *Lord Clarendon's* orders, "As soon as any clerk shall have copied any pleading or other record, he shall bring the original thereof presently back to such six-clerk to whom the custody shall belong, for the more safe keeping and disposing thereof.—That commissions for the examination of witnesses, and the depositions thereby taken, shall be returned unopened to the respective six clerk, who ought

day of January instant, that the depositions taken under and by virtue of a commission, issued for the examination of the witnesses on the part of the defendant in this cause, may be filed; And that Mr. Ratcliffe, the clerk in court, who issued the said commission, and in whose custody the commission and depositions now are, may be ordered

“ to have the keeping thereof. And no copy of any bill, &c. depositions of witnesses, or other record, shall be delivered or sent to any client, or solicitor, or other person, till the same be signed by the proper officer to whom they belong.” (a)

These orders seem virtually to imply, that office copies of depositions of witnesses, taken by commission, ought to be signed by, and the deposition filed with, the six clerk, in whose division the commission has been made out, but these orders have been most shamefully disregarded. At present the commission when executed is returned back to the clerk in court making out the commission, publication is then passed, and office copies are made of these depositions, &c. and as they are never filed, of course they are never signed by the six clerk; these office copies are frequently made by writing stationers, or writers out of the six clerks office, and sometimes it happens, in this instance, as in bills and answers, that the original record is forgotten, and not brought back, and if brought back to the six clerks office, the depositions are deposited in the clerk in court's desk, and lost. (b) This irregularity calls loudly for redress. And whenever an apprehension is entertained, that the original depositions may at some future period be wanted as evidence, or to be exemplified, the solicitor should apply for an order to file the depositions with the proper six clerk; the copies made by the clerk in court, not authenticated by the signature of the proper officer, would probably be rejected if offered to be given in evidence at law.

(a) Ord. Canc. Bea. Ed. 191, 221, 239.

(b) Old Bailey sessions 1815, two persons were convicted of stealing the records from the six clerks office, and received sentence of transportation for seven years.

to deliver them to Mr. Utterson, the six clerk, for that purpose. Dated January 21, 1816.

Geo. Hill, plaintiff's solicitor.

To Mr. Radcliffe,

Defendant's clerk in court.

Notice of Motion, that upon Payment of Money into Court, an Injunction may be issued to restrain Proceedings at Law.

In Chancery.

Between Simon Jaussen, esq. Plaintiff;
and

Vulture Hopkins, Defendant.

The plaintiff intends to move this court, on Tuesday next, the 26th day of January instant, or as soon after as counsel can be heard, that upon payment of the sum of 266*l.* 12*s.* 2*d.* into the bank, in the name and with the privity of the accountant general of this court, in trust, in this cause, an injunction may be awarded to restrain the defendant from all proceedings in the action commenced by him against the plaintiff; and to restrain the defendant from commencing any other action at law, in any manner touching the matters in the said bill mentioned. Dated the 24th of January, 1816.

Charles Baynes, plaintiff's solicitor.

To Mr. Bicknell,

Defendant's clerk in court.

Notice of Motion for an Injunction to restrain a Defendant from proceeding in Ejectment, till the Hearing of the Cause.

In Chancery.

Between Charles Berkeley, esq. Plaintiff;
and
John Cheeke, Defendant.

The plaintiff intends to move his honor the vice chancellor on Friday next, being the fourth and last general seal, or as soon after as counsel can be heard, that the defendant may be restrained by the injunction of this court, from further proceeding at law, in the ejectment brought by the defendant, for the recovery of the premises in the pleadings in this cause mentioned, until the hearing of this cause. Dated the 16th day of December, 1816.

Joseph Bliss, plaintiff's solicitor.

To Mr. Bicknell,
Defendant's clerk in court.

Notice of Motion, that an Injunction already issued in a Cause, may extend to stay Trial.

In Chancery.

Between Thomas Richards, Plaintiff;
and
John Horne, Defendant.

The plaintiff intends to move his honor the vice chancellor on Tuesday next, the 18th of July instant, being the second general seal, or so soon after as counsel can be heard, that the injunction already obtained in this cause, for restraining the defendant's proceeding at law, may

extend to stay the trial of the action at law in the bill mentioned. Dated the 12th of July, 1816.

Joshua Cox, plaintiff's solicitor.

To Mr. Shaddick,
Defendant's clerk in court.

Notice of Motion, that an Injunction obtained in a Cause, may extend to restrain a Defendant from receiving Money levied, and in the Hands of the Sheriff.

In Chancery.

Between Michael Peake,
and

Plaintiff;

Thomas Hall, and another, Defendants.

The plaintiff intends to move this court on Monday 31st day of October instant, being the first general seal before next Michaelmas term, or so soon after as counsel can be heard, that the injunction already issued may extend to restrain the defendant, Hall, from receiving the sum of £30 levied in execution of a writ of *fieri facias*, in the action at law brought by the defendant, Hall, against the plaintiff, for the rent of the premises in the pleadings mentioned; and that the sheriff of Middlesex may be restrained from paying over to the defendant, Hall, the said sum of £80 levied as aforesaid. and now remaining in his hands, until the coming in of the defendant Hall's answer, and the further order of this court. Dated the 29th of October, 1816.

James Rice, plaintiff's solicitor.

To Mr. Smith,
Defendants' clerk in court.

Notice of Motion, that Defendants may pay the Balances reported to be in their Hands into Court, within a limited Time, where the same is in Money.

In Chancery.

Between John Fox, and others,

and

Seth Ward, and others, Defendants.

Take notice, that this honourable court will be moved on Thursday, the 10th day of May instant, or so soon after as counsel can be heard, that the above-named defendant, Seth Ward, may, within a fortnight, pay into the bank, (a) with the privity of the accountant general of this honourable court, to be placed to the credit of this cause, the account of "interest of the testator's personal estate," the sum of 654*l.* 8*s.* 9*d.* certified by master Steel's report made in this cause, dated the 20th day of December last, to be due from the said defendant on the balance of account of interest of the testator's personal estate; and that the said defendant may, within a fortnight, pay into the bank, with the privity of the said accountant general, to be placed to the credit of this cause, the account of "rents and profits of the testator's estate," the sum of 410*l.* 5*s.* 4*d.* certified by the said master in his said report, to be due from the said defendant on the balance of account of rents of the testator's estate; and that the said respective sums may be laid out in the purchase of Bank three per cent. annuities, in the name and with the privity of the said accountant general, in trust in this cause, to the like account, pursuant to the directions

(a) When a sum of money is to be paid into court, this is the form of the order; but when stock is to be transferred, the order runs, that the stock shall be transferred into the name, and with the privity of the accountant general—the like in purchases of stock.—*Turner.*

of an order made in this cause, on the 27th day of January last. Dated the 7th day of May, 1816.

William Hands, plaintiffs' solicitor.

To Mr. Radcliffe,

Defendant Ward's clerk in court.

Notice of Motion to open the Biddings.

In Chancery.

Between George Gould,

Plaintiff;

and

John Richard, and others, Defendants.

Mr. George Jackson, of the chancery-office, intends to move this court before his honor the vice chancellor on Saturday, the 17th day of December instant, or so soon after as counsel can be heard, that the bidding for that part of the estate directed to be sold in this cause, comprised in lot No. 8, of which John Goodall, of Wellinborough, in the county of Northampton, esquire, is reported the best purchaser, at the sum of £2200 may be opened, the said George Jackson being willing to give £250 more for the estate comprised in the said lot. Dated the 15th of December, 1816.

George Jackson.

To Mr. Bicknell and Mr. Sturdy,
clerks in court for the plaintiffs
and defendants, and Mr. Good-
all, the purchaser.

Notice of Motion to open the Biddings.

In Chancery.

Between John Grant,

Plaintiff;

and

Thomas Rackett, and others, Defendants.

Take notice, that this court will be moved on Tuesday, the 28th day of November instant, or so soon after as counsel can be heard, on the part of Mr. Joseph Helden, of Islington, in the county of Middlesex, gent. that it may be referred back to Mr. Harvey, one of the masters of this court, to approve of a better purchaser of the premises comprised in lot No. 1, being part of the estate in question in this cause, the said Joseph Helden proposing and submitting to give £350 for the same, being £35 more than was bid for the said lot at the former sale. Dated the 26th of November, 1816.

Thomas Jones, solicitor for the said Joseph Helden.

To Mr. George Ord, the purchaser,

Mr. Mortimer, clerk in court for
all the parties.

Notice of Motion by a Purchaser of an Estate
before a Master, to be at Liberty to pay in his
Purchase Money, &c.

In Chancery.

Between John Wood, and others, Plaintiffs;

and

Thomas Ord, and others, Defendants.

Take notice, that John Thompson, esq. the purchaser of lot 3, one part of the premises in question in this cause, intends to move his honor the vice chancellor on

Thursday the 17th day of this instant December, being the last general seal after Michaelmas term, or so soon after as counsel can be heard, that he may be at liberty on or before the 23d day of this instant December, to pay the sum of £2,800 being the purchase money of the said lot 3, into the bank, with the privity of the accountant general of this court, in trust in this cause; and that the said John Thompson may thereupon be let into possession of the premises comprised in the said lot, and may receive the rents and profits thereof from Michaelmas last; *and that the said money when so paid in may not be paid out without notice to the said purchaser.* Dated this 15th day of December, 1816.

J. Williams, solicitor for the purchaser.

To Mr. Radcliffe, plaintiffs'

and Mr. Wainewright, defendants' clerks in court.

Notice of Motion that a Purchaser may apply
Part of the Purchase Money towards paying a
Mortgagee of the Premises, and the Residue
into the Bank.

In Chancery.

Between William Symonds, esq. and others, Pltfs.
and

Samuel Miller, and others, Defendants.

Charles Talbot, esq. who is absolutely confirmed the best purchaser of the estate, comprised in lot No. 7, at the sum of £1300, being content with, and having approved of, the title thereof, intends to move this court on Wednesday, the 23d day of January instant, or so soon after as counsel can be heard, that he may be at liberty

out of the said purchase money to pay Mr. John Hervey the sum of 1180*l.* 1*s.* 10*d.* in full of the principal sum of £1000 due on mortgage of the said premises, dated the 7th of October, 1794, and the interest for the same, to the 7th day of October last, and also for his costs at law, and in this court in respect thereof; and that the said Mr. Talbot may be at liberty forthwith to pay the sum of 119*l.* 18*s.* 2*d.* residue of his said purchase money, into the bank in the name and with the privity of the accountant general of this court, to be placed to the credit of this cause, subject to the further order of this court: and that upon payment of the said purchase money, all proper parties may join and execute proper conveyances of the said premises to the said Mr. Talbot, or as he shall direct, to be settled by the master, in case the parties differ. And that all proper title deeds, and writings, may be delivered to him, and that the said Mr. Talbot may be let into possession of the said premises, and that the tenant thereof may be directed to attorn and pay his growing rent, as from Michaelmas last; and that such purchase money may not be paid out without notice to him. Dated the 21st day of January, 1816.

Charles Talbot,

To Mr. Baynes, and
Mr. Wainewright, clerks in court for all parties.

Notice of Motion that a Purchaser may forthwith proceed to complete his Purchase.(a)

In Chancery.

Between Timothy Potton,

Plaintiff;

and

Thomas Thurston, esq. and others, Defts.

The defendant Thurston, intends to move this court before his honor the vice chancellor on Friday next, the 20th day of this instant May, or so soon after as counsel can be heard, that Mr. William Holbrow, who has been reported and confirmed the best purchaser of lots No. 1, 3, and 5, situate in the parishes of Hitchen, and Offley, in the county of Hertford, being part of the estates in question in this cause, at the price or sum of £7885 may forthwith proceed to complete his purchase, and that, for that purpose, it may be referred to John Springett Harvey, esq. the master to whom this cause stands referred, to see whether a good title can be made to the said premises; and in case he shall find that a good title can be made thereto, then that he may proceed to settle the conveyances, in case the parties shall differ about the same. Dated this 18th day of May, 1816.

James Coulthard, solicitor for
defendant Thurston.

To Mr. Holbrow, the purchaser.

(a) The practice in compelling an unwilling purchaser to complete his purchase is very fully detailed in Fowle's Exch. Prac. vol. 2. p. 306, *et sequentes*, and in Turner's Epitome of the Exchequer, edited by Mr. Bridgman, p. 137, a well written work, in which the editor displays an extensive knowledge of the subject he has undertaken to elucidate, and from which the junior branches of the profession will derive much useful instruction.

Notice of Motion that a Purchaser may pay in his purchase Money or stand committed.

In Chancery.

Between William M. Bogdani, esq. Plaintiff;
and
John Radcliffe, esq. Defendant.

The defendant Radcliffe, intends to move this court on Tuesday the 6th day of November instant, that John Everett, who is absolutely confirmed the purchaser of the estate comprised in lot 4, at the sum of £1000, may on or before the 4th day of December next, pay into the bank in the name and with the privity of the accountant general of this court, to the credit of this cause, the said sum of £1000, or in default thereof that he may stand committed to the custody of the serjeant at arms. Dated 2d Nov. 1816.

To Mr. John Everett,
the purchaser.

Richard Tristram,
Defendant's solicitor.

Notice of Motion to discharge a Purchaser, and to re-sell the Premises, with other Premises, for which there was no Bidding.

In Chancery.

Between John Dennett, esq. Plaintiff;
and
John Coker, and others, Defendants.

The plaintiff intends to move this court before his honour the vice chancellor, on Tuesday next, the 24th of this instant June, or so soon after as counsel can be heard, that the report of sir John Simon, bart. one of

the masters of this court, dated the 11th day of March last, (by which Mr. William Young is reported the best purchaser, at the sum of £1300 of the premises in question, particularly mentioned and described in a schedule annexed to the said report, and directed to be sold in this cause,) may be discharged; and that the said master may be directed forthwith to publish one or more advertisements, in the London Gazette, for the sale of the said estate, whereof the said Mr. Young is so reported the best purchaser, as also of the estate for which there was no bidding made. Dated the 20th of June, 1816.

William Phillips, plaintiff's solicitor.
To Mr. William Young, the purchaser.

Notice of Reference where two Bills are filed for
the same Purpose.

In Chancery.

Between George Luxford, esq.
and

Plaintiff,

Jane Collins,

Defendant.

The defendant intends to move this court on Thursday, the 12th day of May instant, or as soon after as counsel can be heard, that it may be referred to one of the masters of this court, to examine and certify whether the two bills exhibited by the plaintiff into this court against the defendant, are not both for the same purpose. Dated 10th May, 1757.

Joseph Blissett,
Defendant's clerk in court.

To Mr. Marriott,
Plaintiff's clerk in court.

This motion, which appears to have been considered as of course, came on to be heard, and the court made the following order :

Lords Commissioners.

Thursday, 12th May, 1757.

Luxford v. Collins.

Upon motion this day made unto this court by Mr. Hoskyns, being of the defendant's counsel, it was alleged that the plaintiff having exhibited two bills into this court against the defendant for one and the same purpose, which was irregular, whereupon it is ordered, that it be referred to Mr. Montague, one of the masters of this court, to examine and certify, whether both the said bills are not for one and the same purpose.

And this course of practice is laid down in a reporter, (a) of whom Lord Eldon has been pleased to express his approbation, though not in this particular instance.

Lord Hardwicke, upon a similar application, observed, that where two bills are brought in the same name, and for the same matter, the course is a reference to inquire, whether both bills are for the same matter, and to stay proceedings in the last. (b) In tythe causes, where several bills are brought by the same complainant, and applications made for a reference to examine and certify whether any, and which of the causes may not be consolidated, the court entertains the motion, and usually makes the reference, but not as of course before answer. (c) Creditors seem not to be restricted to one bill. (d) Even after a decree in a creditor's suit in the court of Exchequer, other creditors have been allowed to proceed in the court of Chancery. And where bills are brought by several procchein amies, on behalf of an infant, the reference is of course to see whether they are for the same matter, and which is most for the infant's benefit, and to stay proceedings in the other. (e)

The course of practice seems to have been lately altered. Lord Eldon, in a recent instance, where the application was for a

(a) Mose. 268.

(c) 3 Atk. 603.

(e) 1 Ves. 545. Dick. 310.

(b) 1 Ves. 545. 16 Ves. 344.

(d) Ambl. 613.

Notice that a Master's Clerk may refund and pay Fees overcharged in Proceedings in the Master's Office.(d)

In Chancery.

Between John Groman, and others, Plaintiffs;
and

Thomas Wilkinson, Defendant.

The plaintiff, John Groman, intends to move this court on Thursday the 6th day of February instant, that Mr. Maxwell, clerk to John Harris, esq. the master to whom this cause stands referred, may be directed to repay to Mr. Blissett, the plaintiffs' clerk in court and solicitor the sum of twenty guineas, demanded and taken by the said Mr. Maxwell for preparing and transcribing the separate report made in this cause, and also the sum of 25s. for an overcharge in the office copy of the draft of the said report. Dated 4th February, 1748.

To John Harris, esq. J. Blissett,
and Mr. W. Maxwell, his clerk. Plaintiffs' solicitor.

reference to see *whether two suits were for the same matter*, in support of which, the case in *Moseley(a)* was relied upon: in refusing the order, was pleased to observe, that he could find nothing in support of the motion, but the case in *Moseley*, that upon looking into his Lordship's own notes, he found nothing confirming it, nor in the books of practice, *(b)* according to which the regular way of obtaining this reference is by *plea. (c)*

(d) There have been several applications of this nature by motion; but if the case is attended with any very gross instances of imposition, the better way is by petition.

(a) Mose. 268.

(b) Redesd. Tr. 197. Prae. Reg. Wy. Ed. 329.

(c) 17 Ves. 353.

Notice that a Master may be ordered to sign his Report.(a)

Between the Attorney General, Plaintiff ;
and
— Boyer, Defendant.

The defendant intends to move his honour the vice chancellor on Thursday, the 23d day of January instant, or as soon after as counsel can be heard, that Mr. Stratford, the master to whom this cause is referred, may be directed to sign his report forthwith. Dated 21st January, 1816.

To Francis Paul Stratford, esq. **Foster, Cooke and Frere,**
Defendant's Solicitors.

Notice by Co-defendants that the other Co-defendant may be ordered to enter an Appearance and put in an Answer. (b)

In Chancery.

Between Joseph Pavit, and others, Plaintiffs ;
and

Mary Lonsdale, and others, Defendants.

The defendant Mary Ann Ustonson intends to

(a) These applications are not encouraged by the court, nor should they be made, unless an absolute necessity leaves no other means of redress. (c) An application was made where a master had refused to mark in his book the attendance of a solicitor, and the motion stood over that the lord chancellor might see the master, and the object of the motion being obtained, it was not mentioned again.

(b) The defendant Davis, an attorney, who was co-executor with the defendant Lonsdale, one of the residuary legatees, pre-

(c) Dick. 103.

move this court on Monday next the 11th day of March instant, or as soon after as counsel can be heard,

vailed upon her to sell out the whole of the money standing in the testator's name in the funds, the whole of which he received and retained for the purposes of the executorship; repeated applications had been made to him to make up the executorship's accounts, and to divide and pay the surplus to the defendants, the residuary legatees: being very closely pressed, the defendant Davis filed a bill, in the name of the next of kin, for the purpose of passing his accounts under the direction and indemnity of the Court, making himself and the residuary legatees defendants; the answer of the residuary legatees was immediately put in and filed; a very considerable time elapsed, and the defendant Davis had not even appeared; innumerable applications had been made, requesting him to appear and proceed in the suit, without effect; the defendant Ustonson, one of the residuary legatees, was advised to make a special application to the court, by motion, supported by an affidavit of the facts, particularly that the bill was filed at the instance of the defendant Davis, and was wholly under his controul and management, stating that they believed the whole was a contrivance to keep possession of the money. The motion was strenuously opposed as irregular and unheard of, that the court could not entertain an application by one co-defendant against the other, for the purpose of enforcing an appearance and answer, and that the regular course was to move to dismiss the bill, which would leave the defendant Davis open to any remedy the co-defendants might be advised to take. Lord Eldon, C. expressed in very severe terms, his disapprobation of a suit thus instituted, and ordered the defendant to enter his appearance immediately, and to put in his answer in a week; his lordship further signified that he expected the defendant would state in his answer the precise balance he had in his hands, and be prepared immediately to pay it into court. And he further intimated an intention of making a general rule in future, that wherever a suit was instituted by a solicitor, making himself a party defendant, as a trustee or executor, for an account, that upon filing the bill, the answer of the accounting party should be prepared and immediately filed, admitting what the balance in hand was, and an offer for payment of

that the defendant George Davis may be ordered forthwith to enter his appearance and put in his answer in this cause. Dated 9th March, 1810.

George Adams.

To Mr. John Davis.

Defendants' solicitor.

that balance into court immediately when applied for, and that he would commit any attorney, who to delay or evade payment of money under such circumstances, commenced a suit in this court, and then delayed putting in an answer, or put in an insufficient answer, for the purpose of keeping back the money in his hands, a practice, his lordship observed, which had of late become too common, to the disgrace of the profession, and which could not be too much censured and reprobated, and which he would uniformly discountenance and punish. *Pavit and others v. Lonsdale and others, Hil. 1804. Ex relatione.*

And on a subsequent application, where it appeared, that a bill had been filed in 1804, for administering assets, and Thomas Lewis, esq. an attorney of great respectability, the only executor who proved the will and acted, had possessed himself of property to a very considerable amount, and had advised the suit and filed the bill as the plaintiff's solicitor, and continued to act in that capacity till 1814, at which time he had not put in any answer: when the plaintiff appointed a new solicitor and moved, "that the defendant Lewis might be ordered to put in a full and perfect answer within a week or stand committed," which defendant opposed, as irregular, insisting upon the usual orders for time. Upon the motion coming on Lord Eldon observed, That he had had occasion to consider an application of this kind some years ago; but the necessity of his lordship's interfering in that case was removed, by the parties arranging it: *that it was a gross and shameful abuse of the practice, which the court would not permit*: his lordship made the order that the defendant should put in his answer within a week. (a)

(a) 3 Ves. and Bea. 92. where it is stated in a note, that the case alluded to was probably that of Pavit v. Lonsdale, which does not appear to be noticed in Reg. Lib. The motion stood over the following seal, the court indulging the defendant with that opportunity to put in his answer without an order; he availed himself of it; and put in his answer; in consequence of which no order was made.

Notice of Motion that a Clerk in Court may be ordered to deliver over a joint Examination taken by Commission to Interrogatories filed in the Master's Office.

In Chancery.

Between James Dyott, Plaintiff;
and
Stephen Anderson, and others, Defendants.

The defendant James Thomas intends to move this court on Thursday next, the 14th day of June instant, or as soon afterwards as counsel can be heard, that Mr. Mills, the clerk in court for the plaintiff Dyott, and the defendants Anderson and Young may be ordered to deliver over to Mr. Shaddick, the clerk in court for the other defendants, the joint and several answer and examination of the defendants Anderson and Young, taken by commission to interrogatories exhibited by the plaintiff before Mr. Stephen, the master to whom this cause is referred. Dated 12th June, 1814.

To Mr. Mills,
Plaintiff's and defendants'
clerk in court.

Thomas Edwards,
defendants' solicitor.

This motion, which occupied the attention of the court for a considerable time, was resisted on the ground that one defendant had no right to the original examination of another defendant, appearing by a different Clerk in Court, but that by the course of practice, the application should be for an office copy.

Lord Eldon took time to inquire into the practice of the chancery office, and afterwards in deciding upon

the application said, he considered the point made by the plaintiff's clerk in court to be, that the interrogatories being filed by him, the examination taken under these interrogatories is put into his hands, and that the other defendants have no right to have it out of his hands, or a copy of it, for the purpose of prosecuting the object of the suit; and the question was, *whether the examination being put into his hands on behalf of the person exhibiting the interrogatories, any other person can have the benefit of the examination taken under them?* That it was very singular if that could not be, as in many cases the plaintiffs having obtained a decree, all the defendants became actors, as in the principal case, which was a suit for administering the assets; his lordship stated at some length the material facts, and concluded by observing, that there was no difficulty in this case, for the manifest reason, that the master has considered the defendants as actors: and this is an examination which has been pursued in the master's office for the benefit of those very defendants, *the examination, though put in upon interrogatories exhibited by one party, being for the benefit of all*, his lordship thought, *they had a right to the benefit of it*: but as there had been so much difficulty upon the practice, the costs of the application were to be given out of the estate.(a)

The standing orders of the court were not adverted to in the argument or the decision. *Lord Thurlow*, upon a question between two clerks in court, (Mr. Lally and Mr. Metcalf) as to the custody of an answer, grounded his decision wholly upon the orders of court,(b) that a sworn clerk, while these orders remained in force, *could not set up or claim any lien upon a record*, which his lordship considered an answer was, when filed.

(a) 3 Ves. and Bea. 176.

(b) Ord. Canc. Bea. Ed. 191, 221, 239. Ant. 240.

Notice of Motion by a Defendant to restrain a Plaintiff from employing a Solicitor who had been jointly retained for the Defendant, and had gone over to the adverse Party in the Suit.

In Chancery.

Between The Most Noble George, Marquis Cholmondeley, and Ann Seymour Damer
Plaintiffs;

and

The Right Honourable Lord Clinton, and
others - Defendants.

The defendant lord Clinton, intends to move this court on Monday next, the 16th of January instant, or as soon after as counsel can be heard, that the plaintiff the marquis Cholmondeley may be restrained by the order and injunction of this court from employing William Montriau, a solicitor of this court, and one of the attorneys of the court of King's Bench as his solicitor in this suit, or as his attorney or solicitor in any other suit in equity or action at law commenced or to be commenced by the said marquis Cholmondeley against the said defendant lord Clinton, in respect to any estates or property, the title whereof came to the knowledge of the said William Montriau, as clerk to William Seymour, one of the above-named defendants, a solicitor of this court, while the said William Seymour was the attorney and solicitor of the defendant lord Clinton, or which came to the knowledge of the said William Montriau, as solicitor for the said lord Clinton in partnership with the said William Seymour and one William Squib; and also to restrain the said William Montriau from acting as solicitor or attorney for the said marquis Cholmondeley in any such suits or actions, and from com-

municating to the plaintiff marquis Cholmondeley, his counsel, solicitors, attornies or agents, any information relating to the matters in dispute in such suits or actions which have come to the knowledge of the said William Montriou, as clerk to the said William Seymour, or as solicitor to the said lord Clinton. Dated the 14th of January, 1815.

To Mr. William Montriou,
plaintiffs' attorney.

William Seymour,
defendants' attorney.

The matter of the above notice came on to be heard, and after hearing a very long and special argument, lord Eldon considered the question to be *nakedly, whether a person having been long officiating in a cause as the solicitor, and discharging himself by the dissolution of a partnership, can afterwards become the attorney on the other side in that cause?* And it being a general point applicable as much to all the courts, as to the court of Chancery, his lordship postponed deciding the question until he could speak to the common law judges upon the subject.

At a subsequent day, his lordship stated to the bar, that he had been informed by lord Ellenborough and lord chief justice Gibbs, that the opinions of their two courts were, *that an attorney could not be allowed so to act*, and that the master of the rolls, and the vice chancellor concurred in that opinion. And that his lordship had received from the lord chief baron of the Exchequer, the opinion of that court, which was, *that no solicitor who had been employed as such on the one side, could afterwards be employed on the other.* (a)

Notice of Motion that a Master's Clerk may be directed to deliver to a Defendant's Clerk in Court an Examination, taken by Commission to Interrogatories filed in the Master's Office.

In Chancery.

Between John Drake, Plaintiff;
and
Thomas Woodford, and another, Defendants.

The defendant, Thomas Woodford, intends to move this court on Thursday next, the 10th day of November instant, or as soon after as counsel can be heard, that Mr. Woodroffe, clerk to Peter Holford, esq. the master to whom this cause is referred, may be directed to deliver to Mr. Bicknell, defendant Woodford's clerk in court, the commission and examination of the said defendant to interrogatories filed in the master's office. Dated 8th November, 1803.

To Peter Holford, esq. Joseph Bicknell,
and to Mr. Woodroffe, his clerk. defendants' clerk in
court.

The defendants were executors, one of whom lived at *Salisbury*, the other at *Vauxhall*. Interrogatories for their examination had been brought in and allowed, and a commission had issued to take the examination of the defendant at *Salisbury*, under which a joint examination had been very *irregularly* returned, and left at the public office in Southampton-buildings; the other defendant in town applied at the master's office to be sworn to the examination, for which purpose the Master's clerk took the commission and examination from the public office,

and swore the defendant thereto, and claimed the custody of it, as a town examination.

An application was made by the clerk in court to deliver up the commission and examination, and upon refusal, a motion was made to the court. *Lord Eldon* observed, that the proceeding was founded in mistake altogether : that no authority was given by the commission to take a *joint examination* ; for the defendant in town there must be a separate examination, and that the *dedimus* and examination must be returned to the proper custody. His lordship refused to make any order, but directed the examination of the defendant in the country to be given up to the clerk in court ; that the remainder was worth nothing.(a)

(a) *Drake v. Woodford, and another*, 1 *Smith's Rep.* 116. *Ord. Canc. Bea. Ed.* 218, 221.

OBJECTIONS.

OBJECTIONS, like exceptions, are the allegations of a party in writing, stating that some pleading, or proceeding in a cause, is insufficient, mistaken, or irregular, in a certain point, or points, particularly set forth in such objection. Objections are to the draft of a report, what exceptions are to the report itself.

Objections are the ground work of exceptions, the latter derive their name from the mere formulary shape objections assume when matured into exceptions; the matter of exception must, if not literally, at least in substance, be founded upon the objections to the draft of the report. If any one of the exceptions assign matter *dehors* the objection, upon which it is intended to be grounded; that exception will be irregular, and, as it should seem, must be over-ruled.

Objections do not lie to reports, or more correctly, to certificates which require no confirmation, or act of the court, to give them effect; when made in matters *ex parte*, or on references of which the master is *sui juris* competent to decide, there the master's judgment is founded merely on his own conception of the matter; of these reports he prepares no draft to ground objections; but the party takes exceptions in the first instance; to a report on a reference for impertinence objections do not lie: (a) so of certificates of taxing costs, and the like.

The rules and orders of court do not precisely point out in what cases exceptions may be taken, not grounded upon objections; it may however be collected from the reports,

and the practice at present seems to be settled, that in all cases where the master prepares a draft of his report, the party who means to appeal to the court must bring in objections to the draft, or in default he will be absolutely precluded from excepting, unless by special order, (a) which is very sparingly granted. To give the party an opportunity of bringing in objections, the warrant to sign the report must have a period of four clear days, between the day of service and the day of signing the report.

The objections may be drawn by the solicitor, but in difficult cases should be perused and settled by counsel; and if the party intends to take the opinion of the court, the counsel sometimes signs the objections, and attends and argues them before the master; but the signature of counsel is not necessary. The objections are to be engrossed upon unstamped paper, and left at the master's office, and a warrant taken out upon "bringing in objections to the draft of the master's report," and served upon the adverse clerk in court, for which full directions have been given, and another warrant taken out, when the former is returnable, "to proceed upon the objections to the draft of the report," and warrants taken out successively, and attended until the objections are allowed or disallowed.

(a) Dickens, 290, 313, 862, 333. the application for an order that the master may review his report, should be by motion, not by petition. In *Jones v. Smith*, where the exceptions were too late, and the report had been regularly confirmed, the court upon a very strong case made by the defendant, refused to make an order, that the master might review his report; and upon appeal to the house of lords, no relief was given upon that point. Dom. Proc. 1798.

The Form of Objections taken to the Draft of a Master's Report.

In Chancery.

Between Walter Robinson, and others, Plaintiffs;
and
Thomas Harrington, and others, Defendants.

Objections taken by the plaintiff to the draft of the
report in this cause, prepared by sir John Simeon,
bart. the master to whom this cause stands referred.

First Objection.

For that the said master hath not, in and by the draft
of his said report, charged the defendant Joseph Ed-
munds, with the sum of 15*l.* 10*s.* for one quarter's rent
due from William Weston, from Christmas, 1808, to
Lady-day, 1809, which he ought to have done.

Second Objection.

For that the said master hath not, in and by the draft
of his said report, charged the said defendant with any
rent of the said fishery, from Lady-day, 1802, to Lady-
day, 1809, Whereas he ought to be charged with the
same, for that without his wilful default he might have
received the same, which for six years during the time
aforesaid amounts to £15.

Third Objection.

For that the said master hath, in and by the draft of his
said report, certified that there is due to the defendant
Joseph Nichols, on his mortgage therein mentioned, the
principal sum of £8000, and hath computed interest on
the said £8000. Whereas the said master ought to

have computed interest on the sum of 771*l.* 2*s.* 5*d.* the principal money advanced.

In all which particulars the plaintiffs submit, that the draft of the said report ought to be varied and rectified.

Form of Objections to the Draft of a Master's Report.

In Chancery.

Between William Thompson, and others, Plaintiffs ;
and

Samuel Purlewent, and others, Defendants.

-An objection made and taken by the said defendants, to the draft of the general report of John Campbell, esq. one of the masters of this honourable court, prepared in this cause :

For that the said master, by the draft of his said general report, hath stated, that the sum of 604*l.* 6*s.* was due to the defendants James Edwards and John Simons on the 20th day of December, 1800, for principal and interest on a mortgage of the said William Thompson's estate called Almshoe-bury, and the manor of Wymondly, by indentures of lease and release, bearing date the 4th and 5th days of March, 1796, as appeared by a report made in this cause, the 17th day of July, 1801 ; and for interest of the sum of 285*l.* 16*s.* 6*d.* being the principal money due on the said mortgage, at the rate of 4*l.* 10*s.* per cent. per ann. from the said 20th day of December, 1800, to the 25th day of March, 1802, being one year, three months, and five days, the further sum of 70*l.* 17*s.* 9*d.* making together 675*l.* 3*s.* 9*d.* is an incumbrance on the said estates, subsequent to the demands of the several judgment creditors in the said general report mentioned.

Whereas the said master ought to have stated, that the said sum of 604*l.* 6*s.* and the said subsequent interest were due to the said defendants prior to the demands of the said judgment creditors, or any of them, for that by the said indenture of release, of the 5th day of March, 1796, the manor and other the premises thereby conveyed to the said James Edwards, and John Symonds, for securing the payment of the said sum of 285*l.* 16*s.* 6*d.* and interest, are so thereby conveyed to them, their heirs and assigns, for ever, subject only to the mortgages therein recited to have been made to Joseph Nichols, and Richard Brackwell, in the said indenture named, which mortgages have been long since paid off and satisfied.

In which particulars the said James Edwards and John Symonds, do object to the draft of the said report, and pray that the same may be varied and altered.

Form of Objections taken to the Draft of a Master's Report.

In Chancery.

Between Ann Page, widow, and another, Plaintiffs;
and

Thomas Wayne, esq. and others, Defts.

An objection taken by the plaintiffs, to the draft of a report prepared in this cause, by William Alexander, esq. the master to whom this cause stands referred.

For that the said master, in and by the draft of his report, hath certified that he hath enquired, whether the farms, estates, and premises, comprised in the settlement on the plaintiff, Ann Page, were at the time of the death

of Michael Darton, esq. in the decree named, to be let to a tenant, of the yearly value of £400, allowing thereout all public taxes, payable by the landlord out of such estates: and upon such enquiry, and having duly considered the evidence laid before him in relation thereto, hath certified, that it appears to him that the said farms, estates, and premises, comprized in the said settlement, were, at the time of the said Mr. Darton's death, to be let to a tenant, of the yearly value of £400, allowing thereout all public taxes, payable by the landlord out of such estates, which the said master ought not to have done. And the plaintiffs do therefore object to the said draft of the master's report; for that it did appear by the evidence laid before the master, on the part of the plaintiff, and by other papers read to him, that the farms and estates comprized in the said settlement, when let to tenants, though nominally let at the yearly rents mentioned in the said settlement, yet were subject to various deductions and allowances to tenants thereout, exclusive of public taxes, payable by the landlord; and that the said farms, estates, and premises, were not at the time of the death of the said Mr. Darton, to be let to a tenant, of the yearly value of £400, allowing thereout all public taxes payable by the landlord out of such estates; and so the said master ought to have certified: and For that the said master hath not stated the evidence laid before him on which his opinion is founded.

In all which particulars the plaintiffs do object to the draft of the said report, and pray that the same may be varied and altered.

PETITIONS.

PETITIONS must be written upon a half-crown stamp (except where a party is (a) admitted to sue or defend in *forma pauperis*, when a stamp is not necessary,) and need not be signed by or in the name of any person making the application, and are directed and presented to the lord chancellor, or master of the rolls, through their respective secretaries. The application may either be for some direction or order, which will be granted of course, or in which it will be necessary to hear counsel in court. In the first case, the order is drawn up by the register, on the petition being answered and left with him for that purpose; in the other case, the petition is answered by directing "all parties to attend the next day of petitions, of which notice is to be given forthwith," and is then set down to be heard on the next petition day, when counsel attend, and debate the matter; and such order is made by the court as the subject requires. The petition, and the order thereon in this last case, where an attendance is ordered, should be served on the clerks in court for the adverse parties, two clear days before the day appointed for hearing petitions: as if the petition day is Thursday, the petition should be served on the

(a) But until admission, and even on the petition, praying to be admitted to sue or defend in *forma pauperis*, stamps are necessary.—*Turner*.

Monday preceding: and an affidavit should be made and filed of the service, and an office copy thereof procured to read in court, in case the parties who are so served do not attend on the hearing of the petition.

Petitions, where the applications are of course, are upon various occasions; such as, for liberty to amend a bill, time to answer a bill, for a commission to take an answer or examine witnesses, to assign a guardian to an infant defendant, &c. &c. and are generally presented to the master of the rolls (except for the setting down a plea or demurrer for argument, and on such other applications, where the matter prayed is the particular province of the lord chancellor to grant,) in causes which must come for debate or argument before him. Petitions for matters of course, presented to the master of the rolls, are left at his secretary's office, in the rolls yard; pay answering, 5*s.* 6*d.* The order is drawn up by Mr. Bird, at the register's-office, on the petition, and answer thereto being left with him. Petitions for matters of course to the chancellor are left at his secretary's office, (Mr. Farrer, Lincoln's-inn-fields): pay answering, 10*s.*; the order is likewise drawn up at the register's office, the petition answered, being left for that purpose. For an order comprised in one side of the paper, 6*s.* is paid. The order must be passed by the register, which is done by the initials of his name being put in the margin, at the foot of the order, by the clerk at the seat, the order must then be entered by the proper^(a) entering clerk in the same office. An order on one side will be entered from a copy thereof, which must be made by the

(a) There are two entering clerks, whose seats are on each side of the doof; one enters all orders and decrees, where the first plaintiff's name begins with any letter from A to K; and the other all orders and decrees where the first plaintiff's name begins with any letter from L to Z. Over the seats those letters are marked for the direction of the solicitor.—*Turner.*

If a whole petition is recited in the affidavit of service, the court will make the attorney who drew it, pay the costs out of his own pocket.(a)—*Editor.*

(a) 1 Atk. 139.

Petition for an Attachment returnable immediately.

In Chancery.

Between John Payne, and others, Plaintiffs;
and

James Stort, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble Petition of the Plaintiffs,

Sheweth,

That your Petitioners having filed their bill against the above-named defendant, and others, the said defendant hath appeared thereto, but hath not put in his answer within the time allowed by the rules of this honourable court for that purpose.

That the said defendant J. Short, resides in the city of London, as by the affidavit annexed appears.

Your petitioners therefore most humbly pray your honour, that they may be at liberty to sue out process of contempt against the defendant, J. Short, for want of his answer, returnable immediately, *and that all future process of contempt against the said defendant may be made returnable in the same manner.*

And your petitioners shall ever pray, &c.

Petition to take the Answer of a Defendant without Oath.

In Chancery.

Between Thomas Sturt,
and

Plaintiff;

William Wynne, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having filed his bill in this honourable court, against the above-named defendants, and others, he is willing to take the answer of the said defendant, William Wynne, without oath.

Your petitioner therefore most humbly prays your honour, that the said defendant, William Wynne, may be at liberty to put in his answer to your petitioner's said bill without oath.

And your petitioner shall ever pray, &c.

Petition to amend Bill.

In Chancery.

Between George Spiller,
and

Plaintiff;

Edward Birckhead, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having filed his bill in this honourable court, the defendants have appeared thereto, but have not yet answered; and your petitioner is advised to amend his said bill.

Your petitioner therefore humbly prays your honour, that he may be at liberty to amend his said bill, as he shall be advised, without costs, amending the defendants' office copies.

And your petitioner shall ever pray, &c.

Another Petition to amend Bill.

In Chancery.

Between John Burford, and others, Plaintiffs;
and

Richard Arnold, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners having exhibited their bill in this honourable court against the said defendant Richard Arnold, and others, who have all appeared thereto and put in their answers; on the perusal of which your petitioners are advised to amend their said bill, but shall not require any further answer from the defendants.

Your petitioners therefore most humbly pray your honour, that they may be at liberty to amend their said bill, as they shall be advised, amending the defendant's office copies, and requiring no further answer from the said defendants.

And your petitioners shall ever pray, &c.

Another Petition to amend Bill.

In Chancery.

Between John Rose, and others, Plaintiffs;
and
William Fenn, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,
Sheweth,

That your petitioners having exhibited their bill against the above-named defendant, William Fenn, and others, the said defendant, William Fenn, only hath appeared and put in his answer thereto (none of the other defendants having yet appeared to the said bill) since which your petitioners are advised to amend their said bill.

Your petitioners therefore humbly pray your honour, that they may be at liberty to amend their said bill, as they shall be advised, on payment of 20s. costs to the said defendant William Fenn, in respect thereof, and without costs as to the other defendants.

And your petitioners shall ever pray, &c.

**Petition to withdraw a Replication, and amend
a Bill.**

In Chancery.

Between George Jennings, Plaintiff;
and
Rose Beckford, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having filed his bill in this honourable court against the above-named defendant, and others, they appeared and put in their answer thereto, to which your petitioner hath replied; but no witnesses have been examined on either side.

That your petitioner is since advised to amend his bill, by adding parties defendants, and otherwise.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to withdraw his replication, and amend his bill, by adding parties defendants, or otherwise as he shall be advised, on payment of 20*s.* costs.

(And your petitioner shall ever pray, &c.

Petition for Subpœna to rejoin, returnable immediately, &c. and for a Commission.

In Chancery.

Between Thomas Strong, and others, Plaintiffs;
and

Slingsby Baynes, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners having exhibited their bill in this honourable court against the above-named defendant, and

is now resident in London, where he will remain for a long time; and your petitioner hath in consequence thereof named the persons subscribed in his room, but the defendant refuses to strike the said names.

Your petitioner therefore humbly prays your honour, that he may be at liberty to alter the commission; and that your honour will be pleased to name one of the two persons subscribed as a commissioner in the room of the said Thomas Long, and that your petitioner may be at liberty to renew the said commission, and to make the same returnable without delay.

S. Newman. And your petitioner shall ever pray, &c.
T. Ross.

Petition for the Lord Chancellor's Letter Missive.

In Chancery.

Between Henry Jones, and others, Plaintiffs;
and

James, Earl of Lonsdale, Defendant.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners have exhibited their bill in this honourable court against the said James, earl of Lonsdale, who in regard to his quality, cannot be compelled by the ordinary process of this court to appear to your petitioners' said bill.

Your petitioners therefore most humbly pray your lordship's letter missive, directed to the said James, earl of Lonsdale, desiring his lordship to appear to your petitioner's said bill, on the 27th day of January instant.

And your petitioners will ever pray, &c.

**Petition for the Lord Chancellor's Letter Missive,
for the immediate Appearance of a Peer.**

In Chancery.

Between Thomas Moore, Plaintiff;

and

James, earl of Lonsdale, Defendant.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiff,
Sheweth,

That your petitioner hath exhibited his bill in this honourable court against the said James, earl of Lonsdale, who in regard to his quality, cannot be compelled by the ordinary process of this court to appear to your petitioner's said bill.

That the said defendant lives and resides in Charles-street, Berkeley-square, in the county of Middlesex, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your lordship's letter missive, directed to the said James, earl of Lonsdale, desiring his lordship to appear to your petitioner's said bill immediately.

And your petitioner shall ever pray, &c.

10th July, 1786. Filing the affidavit of John Stephens, hereto annexed. Be it so. Thurlow, C.

A Petition to file Exceptions *nunc pro tunc*.

In Chancery.

Between John Trott, **Plaintiff;**

and

Samuel Wegg, esq. Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having exhibited his bill in this honourable court against the above-named defendant, he

hath put in his answer thereto, to which your petitioner hath taken exceptions ; but the said exceptions not having been filed within the time limited by the rules of this court, the defendant's clerk in court hath refused to accept the same.

Your petitioner therefore most humbly prays your honour that he may be at liberty to file the said exceptions *nunc pro tunc*.

And your petitioner shall ever pray, &c.

A Petition to file Exceptions *nunc pro tunc*, after a Plea has been argued, and ordered to stand for an Answer, with Liberty to except.

In Chancery.

Between William Short, and^{*} others, Plaintiffs ;
and

James Eld, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners having filed their bill in this honourable court against the above-named defendant, and others, the said defendant put in a plea and answer thereto, on arguing of which plea, on the 2d day of November last, it was ordered, that the same should stand for an answer, with liberty for your petitioners to except thereto, as in the said order mentioned.

That your petitioners have prepared their exceptions accordingly ; but not having been able to prepare them in time to file according to the course of the court, the said defendants' clerk in court refuses to receive them.

(Prayer the same as in the last petition.)

Petition to refer Exceptions.

In Chancery.

Between Johnⁿ Boyd,
and

Plaintiff;

James Lloyd,

Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having filed his bill in this honourable court against the above-named defendant, he hath put in his answer thereto; to which answer your petitioner hath filed exceptions, and the time for the defendant's submitting thereto is expired.

Your petitioner therefore most humbly prays your honour, that it may be referred to one of the masters of this honourable court, to look into your petitioner's bill, the defendant's answer, and the exceptions taken thereto by your petitioner, and certify whether the said answer be sufficient in the points excepted to or not.

And your petitioner shall ever pray, &c.

A Petition to refer Exceptions taken to a Plea and Answer, with Leave of the Court.

In Chancery.

Between Samuel Turner, and others, Plaintiffs;
and

James Rice, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners having exhibited their bill in this honourable court against the above-named defendant,

and others, he put in his plea, and answer thereto, on arguing of which plea, on the day of last, the same was ordered to stand for an answer, with liberty for your petitioners to except thereto in such manner as in the said order mentioned.

That your petitioners obtained your honour's order, dated the day of last, that your petitioners might be at liberty to file their exceptions to the said plea and answer as in due time, and your petitioners accordingly soon afterwards filed the same; but the said defendant hath not yet put in an answer thereto, although his time for that purpose is expired.

Your petitioners therefore most humbly pray your honour, that it may be referred to one of the masters of this honourable court, to look into your petitioner's bill, the said defendants' plea and answer, and the exceptions taken by your petitioners thereto, and certify wherein the said plea and answer is insufficient.

And your petitioners shall ever pray, &c.

Petition to serve a Subpœna to hear Judgment on a Defendant's Clerk in Court, the Defendant not being to be found.

In Chancery.

Between Leonard Hampson, and others, Plaintiffs;
and

Daniel Timms, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That this cause being set down to be heard on the day of next, your petitioners have caused a

subpœna to hear judgment to be sued out, but your petitioners have not been able to serve the above defendant, Daniel Timms, therewith, although they have used all diligence to find him for that purpose; and your petitioners are induced to believe that the said Daniel Timms keeps out of the way, or secretes himself purposely to avoid being served with the said subpœna, as by the affidavit annexed appears.

Your petitioners therefore most humbly pray your honour, that service of the said subpœna to hear judgment on the said defendant, Daniel Timms's clerk in court may be deemed good service on the said defendant.

And your petitioners shall ever pray, &c.

N. B. An affidavit must be left with this petition, verifying the fact of the defendant not being to be found, although every endeavour has been used for that purpose.

Petition to adjourn a Cause.

In Chancery.

Between Thomas Eade, and others, Plaintiffs;
and

John Oakes, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That this cause is set down to be heard before your honour on Monday, the day of next.

That your petitioners are advised it will be necessary to amend their bill, by adding parties, which they will not be able to do, so as to hear the cause by the time aforesaid.

Your petitioners therefore most humbly pray your honour, that this cause may stand adjourned till the first day of causes in next Easter term, the defendants, by their clerk in court, consenting thereto.

And your petitioners shall ever pray, &c.

I do hereby consent to the prayer of the above petition, if your honour will be pleased to make the order prayed.

—*Editor.*

Geo. Mills, Plaintiffs' clerk in court.

Another Petition to adjourn a Cause.

In Chancery.

Between John Whetham, and others, Plaintiffs;
and

William Hale, and others. Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That this cause having been set down to be heard before your honour on Monday, the 7th day of May last, and your petitioners having been advised to amend their bill, by adding parties, your honour, on the 28th day of April last, was pleased to order that this cause should stand adjourned till the first day of causes in next Trinity term.

That your petitioners will not be able to obtain the answer of the new parties so as to hear the cause by the time aforesaid.

Your petitioners therefore most humbly pray your honour, that this cause may stand adjourned till the first day of causes after Trinity term next, the defendants, by their clerk in court consenting thereto.

And your petitioners shall ever pray, &c.

In Chancery.

Between John Watts, and others, Plaintiffs;
and

Samuel Ford, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiffs,

Sheweth,

That this cause is set down to be heard before your lordship, on Monday, the day of next.

That George Eld, one of the defendants, is become a bankrupt since the cause was set down, and it will be necessary to file a supplemental bill against the assignees of his estate and effects, which your petitioners will not be able to do, and to procure the answer of the said assignees thereto by the time aforesaid.

Your petitioners therefore most humbly pray your
 lordship, that this cause may stand adjourned
 till the defendants, by their clerk in court, con-
 senting thereto.

And your petitioners shall ever pray, &c.

In Chancery.

Between Thomas Vicars, Plaintiff;
and

Robert Pye, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That this cause is set down to be heard before your
honour, on the day of next, and your

petitioner hath served all the defendants, except the above-named defendant, Robert Pye, with subpœnas to hear judgment ; but the said Robert Pye having lately left his lodgings in town, and gone on a journey to the north of England, your petitioner has made various enquiries after him, and has just discovered that the said Robert Pye will be at Durham in a few days, where your petitioner may procure him to be served with a subpœna to hear judgment in this cause.

That the said cause standing so early in the term, your petitioner will not be able to serve the said defendant with a subpœna to hear judgment in due time, and in regard this application is in your petitioner's own delay.

Your petitioner therefore humbly prays your honour, that this cause may stand adjourned to the first day of causes in Hilary term next.

And your petitioner shall ever pray, &c.

Petition to examine a Witness *de bene esse* before
Issue joined.

In Chancery.

Between John Long,
and

Plaintiff ;

James Pym, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That he hath lately exhibited his bill of complaint in this honourable court against the above-named defendants, who have appeared thereto, and have obtained an order for time to answer.

That one Thomas Ward, a very material witness for your petitioner in this cause, and without whose testimony your petitioner is advised he cannot safely proceed to a hearing thereof, is upwards of seventy years of age.

and in a very sickly and infirm state, and not likely to live long, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your honour, that he may be at liberty forthwith to examine the said Thomas Ward, *de bene esse*, as a witness for your petitioner, saving just exceptions.

And your petitioner shall ever pray, &c.

N. B. A witness going abroad may be examined in the same way, and so may a person who is the only witness to a material fact in the cause, whatever may be the age of such witness. (a)

Petition to examine a Defendant as a Witness for the Plaintiff.

In Chancery.

Between Joseph Peddar, and others, Plaintiffs;
and
Richard Oakley, and Samuel
Ord, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,
Sheweth,

That this cause being at issue, your petitioners are advised that the above-named defendant, Samuel Ord, is a very material witness for your petitioners.

Your petitioners therefore most humbly pray your honour, that they may be at liberty to examine the said defendant, Samuel Ord, in this cause, as a witness for your petitioners, saving just exceptions.

And your petitioners shall ever pray, &c.

(a) See *Hankin v. Middleditch*, 2 Br. C. C. 641, and the cases there cited.

Petition of a Plaintiff to enlarge Publication.

In Chancery.

Between James Price, Plaintiff;
and
Thomas Quin, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That this cause being at issue, your petitioner's clerk in court, on the 20th day of November instant, entered a rule to pass publication, which rule will expire on the 27th day of November instant.

That at the time your petitioner caused the said rule to be entered, he conceived that he should be able to examine all his witnesses previous to the expiration of the same; but your petitioner having several witnesses yet to examine, finds he will not be able to procure their examination in time, and in regard this application is in your petitioner's own delay;

Your petitioner therefore most humbly prays your honour, that publication in this cause may be enlarged till the first seal before next term.

And your petitioner shall ever pray, &c

Petitions to enlarge Publication, so as not to hinder Plaintiff's setting down Cause, and that an original and cross Cause may come on together.

In Chancery.

Between Thomas Williams, Plaintiff;
And George Thomas, Defendant.
and

Between George Thomas, Plaintiff;
And Thomas Williams, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff in the original cause,
Sheweth,

That these causes being at issue, commissions were taken out and executed, and witnesses examined thereupon, in the last long vacation.

That your petitioner, the plaintiff in the original cause the 20th instant, caused a rule to be given for passing publication in the original cause, but having several material witnesses, as he is advised, still to examine; and the defendant in the said original cause having consented and agreed to the several matters contained in the prayer of this petition, by his clerk in court signing such consent.

Your petitioner therefore most humbly prays your honour, that publication may be enlarged in the original cause, until the first seal after this term, and that publication may then pass in both causes, so as not to hinder your petitioner from setting down the same for hearing this term; and that the plaintiff in the cross cause may be at liberty to set down his cause to be heard at the same time.

And your petitioner will ever pray.

I do consent to the prayer of this petition, if your honour shall think fit to order the same.

John Radcliffe, defendant's clerk in court.

Petition to add Interrogatories, but not to examine any Witnesses already examined.

In Chancery.

Between Anthony Brand, Plaintiff;
and
George Swale, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner obtained an order for a commission to examine witnesses, returnable without delay, and accordingly examined several witnesses, and returned the commission; but before publication passed, the defendant procured an order for a commission to examine witnesses, and your petitioner has joined in a commission for that purpose; but the said commission is not yet executed, nor is any notice given for the execution thereof.

That your petitioner is advised to add an interrogatory or two to his former set of interrogatories.

Your petitioner therefore humbly prays your honour, that he may be at liberty to add an interrogatory or two to his former set of interrogatories, but so as not to examine any witness that hath already been examined.

And your petitioner shall ever pray, &c.

A Petition to add Interrogatories to Interrogatories filed in the Examiner's Office in Town.

In Chancery.

Between John Radcliffe,

Plaintiff ;

and

Peter Delme,

Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That this cause being at issue, your petitioner has exhibited interrogatories for the examination of witnesses, and procured several to be examined.

That your petitioner is since advised, that it is necessary to add an interrogatory or two to his said interrogatories so exhibited, and in regard publication is not passed..

Your petitioner therefore humbly prays your honour, that he may be at liberty to add an interrogatory or two to his said set of interrogatories already filed, but so as not to examine any witness already examined.

And your petitioner shall ever pray, &c.

Petition for a Commission to examine Witnesses after Publication passed, and the Cause set down for a Hearing.

In Chancery.

Between Giles Heysham,

Plaintiff ;

and

William Wilshire,

Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That this cause being at issue, and your petitioner conceiving that it was not necessary to enter into any proof

on his behalf, and the defendant not examining any witnesses, publication passed, and the cause has been set down to be heard.

That your petitioner is now advised that it is necessary to prove the execution of several deeds, and the signing of several accounts; the witnesses to prove which live in the country, and in regard this is in your petitioner's own delay;

Your petitioner therefore most humbly prays your honour, that he may have a commission to examine his witnesses in the country, returnable without delay, and that the defendant's clerk in court may, in four days after notice hereof, join and strike commissioners names with your petitioner's clerk in court, or in default thereof, that your petitioner may have such commission directed to his own commissioners.

And your petitioner shall ever pray, &c.

**Petition for Leave to examine Witnesses, after
Publication passed, upon the usual Affidavit.**

In Chancery.

Between Hugh Smith, **Plaintiff;**
 and
William Baynes, **Defendant.**

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That publication is passed in this cause, and the same is set down to be heard before your honour in the next term; but your petitioner having several very material

witnesses to examine, without whose testimony your petitioner cannot with safety proceed to a hearing, and neither your petitioner, his clerk in court, or solicitor, having seen, read, or heard read, the depositions taken in this cause, or been informed or acquainted with the purport or contents thereof, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your honour, that publication in this cause may be enlarged until the first seal before next term.

And your petitioner shall ever pray, &c

See the form of the affidavit on which this petition is grounded, under title " Affidavits."

N. B. Either the plaintiff or defendant may make an application for the above purpose.

Petition to set down Exceptions to the Master's Report to be argued,

In Chancery.

Between James Lambe, Plaintiff;
and

Edward Morgan, and Charles Blair, Defts.

To the right honourable the Lord High Chancellor of
Great Britain. *

The humble petition of the plaintiff,

Sheweth,

That Mr. Stephen, to whom this cause stands referred, has made his report thereon, dated the 3d day of February last, to which your petitioner hath lately filed ex-

ceptions, and hath deposited five pounds, as by the register's certificate hereto annexed appears.

Your petitioner therefore most humbly prays your lordship to appoint a short day for the arguing the said exceptions, (*or, that the said exceptions may be set down to be argued next after the exceptions already set down before your lordship*)

And your petitioner shall ever pray, &c.

Petition to set down a Cause for Hearing, on further Directions on the Master's Report.

In Chancery.

Between Edward Leeds,
and

Plaintiff;

Samuel Pilgrim, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That by an order made by your honour on the hearing of this cause, on the 17th day of February, 1816, it was ordered and decreed, that it should be referred to Mr. Simeon, one of the masters of this honourable court, to take the accounts, and make the inquiries therein mentioned, and your honour did reserve the consideration (a) of the costs of this suit, and of all further directions, until after the said master should have made his report.

That the said master hath made his report on the matters so referred to him, bearing date the 4th day of July last, which hath been absolutely confirmed.

Your petitioner therefore most humbly prays your honour, that this cause may be set down to be

(a) If only subsequent costs are reserved, the petition must so state it, and the pray or made conformable thereto.

heard before your honour on further directions, and as to the matter of costs reserved by the said decree; and that your honour will appoint a short day for the hearing thereof.

And your petitioners shall ever pray, &c.

Petition to set down a Cause for further Directions on the Certificate of a Court of Law, upon a Case directed at the Hearing of the Cause.

In Chancery.

Between James Barrett, and another, Plaintiffs;
and

John Glubb, clerk, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiffs,

Sheweth,

That by the decretal order, made on the hearing of this cause, it was ordered, that a case should be made for the opinion of the judges of the court of common pleas, and that the question should be, whether the presentment in the pleadings mentioned was void, as being on a simoniacal contract? And it was ordered, that all facts necessary to bring the matter in question, should be stated in the case; and it was referred to Mr. Steel to settle the same, in case the parties differed: and it was further ordered, that the judges of the said court should be attended with the said case; and all further directions were reserved until after the return of the judges' certificate.

That in pursuance of the said decree, a case was settled, and came on to be argued in Hilary term last, before the judges of the court of common pleas, who have certified, that having heard counsel on both sides, and considered the case, they were of opinion, that the presentation is

not void, it not appearing to the judges of the said court to have been made upon a simoniacal contract.

Your petitioners therefore humbly pray your lordship, that this cause may be set down to be heard before your lordship for further directions reserved by the said decree.

And your petitioners will ever pray, &c.

Petition to set down a Cause for further Directions on the Master's Report, where Exceptions have been taken to the Report by a Defendant.

In Chancery.

Between Edward Young,

Plaintiff;

and

Stephen Pountz,

Defendant,

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff,

Sheweth,

That by the decree or decretal order made on the hearing of this cause before your lordship, on the 11th day of December, 1815, it was referred to Mr. Steel, one of the masters of this court to take the accounts, and make the inquiries therein directed, and your lordship did reserve the consideration of all further directions until after the said master should have made his report.

The said master hath made his report on the matters so referred to him, bearing date the 3d day of August last, to which the defendant hath taken exceptions, which are set down to be argued before your lordship.

Your petitioner therefore most humbly prays your lordship, that this cause may be set down to be heard before your lordship on the further direc-

tions reserved by the said decree, and may be heard, and the said exceptions argued at the same time.

And your petitioner shall ever pray, &c.

Petition to bring on two Causes to be heard together.

In Chancery.

Between William Pinks, Plaintiff;
And William Welch, Defendant.
and

Between Samuel Hare, Plaintiff;
And John Dynes, Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff Samuel Hare,
Sheweth,

That both these causes are set down for hearing before your lordship ; and that the cause, Pinks against Welch, stands 18th, and the cause, Hare against Dynes, stands 34th, in your lordship's paper of causes.

That both these causes relate to each other, and are proper to be heard together.

Your petitioner therefore humbly prays your lordship, that the said cause, Hare against Dynes, may be brought up to the cause, Pinks against Welch, so that both causes may be heard together, and the depositions taken in the cause, Pinks against Welch, may be read at the hearing of your petitioner's cause,

And your petitioner will ever pray, &c.

Petition to enter a Decree, or Order, *nunc pro tunc*.
In Chancery.

Between Slingsby Baynes, Plaintiff;
and .

William Baynes, clerk, and others, Defts.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That the decree made in this cause, bearing date the 7th day of June last, has been drawn up and passed by the register, but the time for entering the same, according to the rules of this court, being elapsed, (a)

Your petitioner humbly prays your honour, that the said decree, or decretal order, may be entered *nunc pro tunc*.

And your petitioner shall ever pray, &c.

Petition to prove Exhibits *visi voce* at the Hearing of a Cause.

In Chancery.

Between Lion Jenkins, Plaintiff;
and

William Windale, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That this cause being set down to be heard before your honour, your petitioner is advised that it will be necessary for him to prove, at the hearing thereof, certain let-

(a) Viz. Four terms inclusive of the term in which the decree was made.

ters written by the defendant to your petitioner, of the following dates; 10th March, 1780; 5th April, 1780; 15th July, 1780; 16th September, 1780.

Your petitioner therefore humbly prays your honour, that he may be at liberty at the hearing of this cause to examine one or more witness or witnesses, *viva voce*, to prove the said defendant's hand-writing to the said letters; and that they may be read in evidence for your petitioner.
And your petitioner shall ever pray, &c.

Petition to restore a Cause after being struck out of the Paper, on Account of the Non-attendance of one of the Parties.

In Chancery.

Between Thelwall Salisbury, Plaintiff;
and

John Radcliffe, esquire, Defendant.

To the right honourable the Lord High Chancellor of
Great Britain

The humble petition of the plaintiff,

Sheweth,

That this cause was in the paper for hearing before your Lordship, the 16th day of May instant, but your petitioner's counsel not being present, the same was struck out of the paper.

That it is important your petitioner should have the directions of the court in the said cause as speedily as possible.

Your petitioner therefore most humbly prays your Lordship, that this cause may be restored in your Lordship's paper of causes, and that the same

may stand in the paper for Monday, the 24th day of May instant.

And your petitioner shall ever pray, &c.

N. B. A petition to restore a cause should be presented immediately, or the prayer will not be granted.

Petition for a Plaintiff to dismiss his Bill with Costs.

In Chancery.

Between William Bogdani, Plaintiff;

and

Charles Churchill, Defendant.

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff,

Sheweth,

That your petitioner having exhibited his bill in this honourable court, against the above-named defendant, who has appeared and put in his answer thereto, your petitioner is now advised to dismiss his said bill.

Your petitioner therefore most humbly prays your honour, that the said bill may stand dismissed out of this court, with costs to be taxed by one of the masters thereof.

And your petitioner shall ever pray, &c,

Petition to set down a Plea, or Demurrer, to be argued.

In Chancery.

Between Charles Seal, Plaintiff;
and
Gilbert Seldon, Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having exhibited his bill in this honourable court, against the above named defendant, he hath put in a plea (or demurrer) and answer thereto.

Your Petitioner therefore humbly prays your lordship, that the said plea (or demurrer) may be set down to be argued next after the pleas and demurrers already set down.

And your petitioner shall ever pray, &c.

See the form of a petition for a defendant, *infra*.

To renew a Sequestration.

In Chancery.

Between Richard Highway, Plaintiff;
and
William Pincks, Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff,

Sheweth,

That the defendant having refused to answer your petitioner's bill, all process of contempt to a sequestration

hath been issued against him ; and a commission of sequestration hath been sued out, executed, and returned ; but your petitioner hath since discovered, that not above one-third part of the said defendant's estate is sequestered ; and that the execution of the said sequestration was committed to the hands of a person therein-named, who neglected to sequester the said estate.

Your petitioner therefore humbly prays your lordship, that he may be at liberty to take out a new commission of sequestration, to sequester the said defendant's estate, directed to new commissioners.

And your petitioner will ever pray, &c.

Petition to appoint a Day for an ~~ascending~~ Defendant to appear.

In Chancery.

Between Jeremiah Gazely, and others, Plaintiffs ;
and

George Chalkley, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners, in Hilary term last, filed their bill in this honourable court against the defendant, George Chalkley, and others, and in the month of January last, took out process of subpœna under seal of this court, against the said defendant, to compel him to appear to, and answer the said bill ; and the utmost endeavours have been used to serve him with the said process, and the most diligent search and inquiry hath been made after him at his last known place of abode, and at divers other places, to serve him with the said process ;

and there is reason and just ground to believe, that he absconds to avoid being served with the process of this honourable court, as by affidavit annexed appears. And in regard the said defendant hath not appeared to your petitioner's said bill ;

Your petitioner therefore humbly prays your honour, to appoint a short day for the said defendant, George Chalkley, to appear to, and answer your petitioners' said bill.

And your petitioners will ever pray, &c.

Petition that Depositions taken *de bene esse*, may be published, copied, and sealed up again.

In Chancery.

Between William Hale,
and

Plaintiff;

Penyston Lambe, and Matthew
Lambe,

Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiff,
Sheweth,

That your petitioner, in or about Hilary term, 1756, filed his bill in this honourable court against the defendants, and obtained an order to examine witnesses *de bene esse*; and two witnesses, Richard Tristram, and William Maurice Bogdani, were examined by commission, in the country, in which the defendants joined, and cross-examined the said witnesses; and the said Richard Tristram is since dead; and the defendants having brought an action against your petitioner, for the recovery of certain copyhold premises, in the county of Hertford, and given notice of trial for the next assizes to be holden in and for the said county. And your petitioner apprehends

and believes, that the deposition of the said Mr. Tristram contains material evidence in behalf of your petitioner, and without which, he cannot make a full defence to the said action, as by affidavit annexed appears.

Your petitioner therefore most humbly prays your Lordship, that the said commission may be opened by the clerks in court for the plaintiff and defendant, Penyston Lamb, and that the deposition of the said Richard Tristram, on his original and cross-examination, may be published, copied, and examined, and then that the said commission and depositions may be closed and sealed up again by the said clerks in court, under their hands and seals.

And your petitioner will ever pray, &c.

I consent to the prayer of the above petition, if your Lordship shall think fit to order the same——

John Radcliffe, defendants' clerk.

Petition that Service of a Writ of Execution on a Clerk in Court may be good Service on a Defendant who absconds.

In Chancery.

Between Gravely Hurst, Plaintiff;
and

Samuel Bradley, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That by a decretal order made in this cause, dated the 4th day of February last, it was amongst other things referred to Mr. Steel, to take an account of what was due to the plaintiff upon the mortgage in the pleadings men-

tioned; and that what the said master should find due that the said defendant should pay unto the plaintiff, as in the said decretal order is mentioned.

That the said master, by his report, dated the 2d day of May last, certified, that there was due to your petitioner the sum of 228*l.* 2*s.* 4*d.* and which report hath been duly confirmed.

That to enforce obedience to the said decree, your petitioner hath issued a writ of execution of the said decretal and other orders, and of the said master's said report, and hath used his utmost endeavours to serve the said defendant therewith; but your petitioner hath not been able so to do. And your petitioner believes that the said defendant absconds to avoid being served with the said writ, as by affidavit annexed appears.

Your petitioner therefore most humbly prays your honour, that service of the said writ of execution upon the defendant's clerk in court in this cause, may be deemed good service upon the said defendant.

— And your petitioner will ever pray, &c.

PETITIONS FOR DEFENDANT.

Petition for six Weeks' Time to answer, in a Country Cause.

In Chancery.

Between William Curling, and others, Plaintiffs;
and

Rose Beckford, and George
Fuller, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendants.

Sheweth,

That the plaintiffs have lately filed their bill in this honourable court against your petitioners, and others,

to which your petitioners have appeared, and taken a copy, but have not been able to put in their answer by the time limited by the rules of the court.

That your petitioners are not in contempt; are resident in Norwich; and have as yet had no order for time.

Your petitioners therefore most humbly pray your honour, that they may have six weeks time to plead, answer, or demur to the plaintiffs' bill, not demurring alone.

And your petitioners will ever pray, &c.

Petition for a Month's further Time.

In Chancery.

Between James Rice, and others, Plaintiffs;
and
John Taylor, James Flint, and
others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendants, sheweth,

That the plaintiffs have lately filed their bill in this honourable court against your petitioners, and others, to which your petitioners have appeared, and have taken a copy.

That your petitioners reside at Norwich; have had but one order for six weeks' time to answer, and are not in contempt.

Your petitioners therefore humbly pray your honour, that they may have a month's further time to plead, answer, or demur to the plaintiffs' bill, not demurring alone.

And your petitioners will ever pray, &c.

N. B. On a second application for time, remember to leave your former order with the register at the time you bespeak the second order.

Petition for three Weeks further Time.

In Chancery.

Between Charles John Clark, and others, Plaintiffs;
and
John Dimsdale, Gravely Hurst,
and others, - Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendants,

Sheweth,

That the plaintiffs have filed their bill in this honourable court against your petitioners, and others, to which your petitioners have appeared, and have taken a copy.

That ~~your~~ petitioners reside at Exeter; and have had but two orders for time, and are not in contempt.

Your petitioners therefore humbly pray your honour, that they may have a commission to take their plea, answer, or demurrer to the plaintiffs' bill, and that the plaintiffs may, in two days after notice thereof, join in commission; or in default thereof, that your petitioners may have such commission directed to their own commissioners, and that your petitioners may have three weeks' time to return the same.

And your petitioners shall ever pray, &c.

N. B. This being the third application, the defendants must enter their appearance with the register; for the mode of doing whereof, see ante. The commission may be prayed for by either the first or second petition; leave to issue it being once obtained, it need not form a part of the prayer of any of the subsequent petitions. The two former orders, or the last order, should be left with the register at the time of bespeaking the third order.

Petition for a Month's Time to answer in a Town Cause.

In Chancery.

Between John Midwinter, and others, Plaintiffs;
and

John Pierson, John Baron, and
others; - Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendants,
Sheweth,

That the plaintiffs having filed their bill in this honourable court against your petitioners, and others, your petitioners have appeared thereto, and have taken a copy thereof.

That your petitioners are not in contempt, nor have yet had any order for time.

Your petitioners therefore humbly pray your honour that they may have a month's time to plead, answer, or demur to the plaintiffs' bill, not demurring alone.

And your petitioners shall ever pray, &c.

Petitions for three Weeks further Time, in a Town Cause.

In Chancery.

Between Thomas Bye, and others, Plaintiffs;
and

John Moore, Thomas Evans,
and others, - Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendants,
Sheweth,

That the plaintiffs have filed their bill of complaint in this honourable court, against your petitioners, and others,

to which your petitioners have appeared, and taken a copy thereof.

That your petitioners have had but one order for time, and are not in contempt.

Your petitioners therefore humbly pray your honour, that they may have three weeks further time to plead, answer, or demur to the plaintiff's bill, not demurring alone.

And your petitioners shall ever pray, &c.

N. B. See the directions on obtaining a second and third order, ante. Vol. I.

Petition for a Fortnight's further Time.

In Chancery.

Between Alexander Marshall, and others, Plaintiffs;
and

Jervase Jones, Stephen Jones,
and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendants,
Sheweth,

That the plaintiffs have filed their bill in this honourable court against your petitioners, and others, to which your petitioners have appeared, and taken an office copy thereof.

That your petitioners have had two orders for time; and are not in contempt.

Your petitioners therefore most humbly pray your honour, that they may have a fortnight's further time to plead, answer or demur.

And your petitioners will ever pray, &c.

N. B. This order will be made only upon the terms of the defendants entering their appearance with the register pursuant to the order of the 23d of January, 1794. See ante, Vol. I.

**Petition for further Time to answer, after two
several Orders obtained.**

In Chancery.

Between John Sidney, Plaintiff;
and
Elizabeth Perry, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That the plaintiff having filed his bill in this honourable court against your petitioner, she appeared thereto.

That your petitioner having obtained the two usual orders for time to put in her plea, answer, or demurrer, not demurring alone to the said bill. And your petitioner, for the reasons hereinafter mentioned, not being able to put in her answer to the said bill, by the 26th day of April last, being the day on which the last of the said orders expired, the plaintiff sealed an attachment against your petitioner for want thereof.

That by an order made by your honour, the 1st-day of May instant, it was ordered, that upon your petitioner's entering her appearance with the register within four days: and upon paying, or tendering to the plaintiff's clerk in court, the costs of the before-mentioned attachment, that she should have a fortnight's further time to put in her said plea, answer, or demurrer.

That your petitioner's defence to the said bill, hath been a long time past before your petitioner's counsel, but the same being of considerable length, and requiring much care and judgment in settling, the bill being for a discovery of your petitioner's title to estates of great value, your petitioner's counsel hath not yet been able to complete the same, but is using his utmost dispatch for that

purpose, and no unnecessary delay is intended on the part of your petitioner.

Your petitioner therefore humbly prays your honour, that she may have further time, until the 31st day of this instant May, to put in her plea, answer, or demurrer to the plaintiff's bill, not demurring alone. And that in the mean time all proceedings for want thereof may be staid.

And your petitioner will ever pray, &c.

Petition for a Plaintiff resident abroad, to give Security to answer Costs, and for a Month's Time to answer, after such Security given.

In Chancery.

Between Edward Kitchiner, Plaintiff;
and
Sarah Field, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,
Sheweth,

That the plaintiff hath lately filed his bill in this honourable court against your petitioner, and your petitioner having been served with a subpoena to appear to and answer the said bill, your petitioner hath appeared thereto, and hath taken an office copy thereof.

That the plaintiff, by his bill, styles himself of New York, in North America.

Your petitioner therefore humbly prays your honour, that the plaintiff may procure some sufficient person on his behalf to give security according to the course of the court to the two senior six clerks of this honourable court, not towards the cause, in a bond of £40, condition-

ed to answer costs, in case this honourable court shall think fit to award any before your petitioner shall be obliged to put in his answer to the said bill; and that your petitioner may have a month's time to plead, answer, or demur to the said bill, after the plaintiff has given such security.

And your petitioner shall ever pray, &c.

N. B. The words in italic in the prayer may be omitted.

Petition by a Defendant to put in an Answer without Oath.

In Chancery.

Between Edmund Collinson, Plaintiff;
and
Francis Arnold, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendant, Francis Arnold,
Sheweth,

That your petitioner is made a party to the plaintiff's bill, merely for the sake of form.

That the plaintiff is willing to take your petitioner's answer without oath, and hath by his clerk in court signified his consent thereto.

Your petitioner therefore humbly prays, that he may have leave to put in his answer, without oath, to the plaintiff's bill.

And your petitioner will ever pray, &c.

I do consent to the prayer of this petition, if your honour will be pleased to order the same.

John Shaddick, plaintiff's clerk in court.

Petition that the Defendant, a Portuguese Merchant, may put in his Answer in the Portuguese Language by an Interpreter.

In Chancery.

Between George Thomas, Plaintiff;
and
Dias de Mendoza Riou, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,
Sheweth,

That the plaintiff having exhibited his bill of complaint in this honourable court against your petitioner, your petitioner hath appeared thereto, and taken an office copy thereof.

That your petitioner is a Portuguese merchant, resident in England, but totally unacquainted with the English language.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to put in his answer to the plaintiff's bill in the Portuguese language, and that Thomas Bonnet, of the city of London, notary public, may be appointed to interpret the oath to be administered to your petitioner in putting in the said answer, and may be sworn to interpret the same truly; and that the said Thomas Bonnet may be also appointed to translate your petitioner's said answer, when put in, out of the Portuguese into the English language, and that he may be sworn to the truth of such translation; and that such translation may be annexed to, and filed with your petitioner's said answer.

And your petitioner shall ever pray, &c.

Petition after an Attachment for a *Dedimus*, and
for Time to return the same.

In Chancery.

Between William Hale, esq. Plaintiff;
and

Thomas Whetham, esq. Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That the plaintiff having exhibited his bill in this honourable court against your petitioner, and served him with process, returnable the first day of last Easter term, your petitioner appeared thereto; but the deeds and writings relating to the matters in question not being in your petitioner's hands, your petitioner could not procure the same so as to perfect his answer by the time allowed by the course of the court. And your petitioner has been lately arrested upon an attachment issuing out of this honourable court.

That your petitioner lives one hundred miles distant from London, and being willing to enter his appearance with the register, by his clerk in court, and inasmuch as your petitioner has had but two orders for time.

Your petitioner therefore prays your honour, that he may be at liberty to take out a commission to take his plea, answer, or demurrer, not demurring alone, and that he may have a fortnight's time to return the same: and that in the mean time all further proceedings may be stayed.

And your petitioner will ever pray, &c.

Petition to take an Answer *de novo*, to amend the
Caption, and stay Process.

In Chancery.

Between John De Courcey, esq. Plaintiff;
and
William Curran, esq. Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That in Hilary term last, the plaintiff filed his bill in this honourable court against your petitioner, and a commission issued to take your petitioner's answer, by virtue whereof it was taken, returned, and filed; but on looking into the same, there appears to be a mistake in the caption, whereupon the plaintiff obtained an order to suppress the said answer, it not appearing by the said caption, that your petitioner was ever sworn to the truth thereof.

That in regard, that this is in your petitioner's own delay, who is desirous that this mistake may be rectified; and your petitioner being ready and willing to pay the costs out of purse, touching the said order.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to sue out another commission, directed to the former commissioners, to take his said answer *de novo*. And that the caption thereof may be amended, and that your petitioners may have three weeks' time to return the same: and that in the mean time all proceedings for want thereof may be stayed.

And your petitioner shall ever pray, &c.

**Petition for a Month's Time to answer Exceptions
and Amendments.**

In Chancery.

Between Samuel Pilgrim, Plaintiff;
and

Robert Heysham, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That the plaintiff having filed his bill in this honourable court against your petitioner, your petitioner put in his answer thereto, to which the plaintiff hath taken exceptions; and your petitioner submitting to answer the same, the plaintiff hath amended his bill, and obtained an order that your petitioner shall answer the amendments and exceptions at the same time.

That your petitioner as yet hath had no order for time to put in his answer thereto.

Your petitioner therefore most humbly prays your honour, that he may have a month's time to put in his plea, answer, or demurrer, to the said amended bill, and exceptions, not demurring alone.

And your petitioner shall ever pray, &c.

**Petition for a Commission after a Contempt to a
Serjeant at Arms.**

In Chancery.

Between Timothy Bristow, Plaintiff;
and

John Spaveal, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That your petitioner appeared to the plaintiff's bill, the

16th instant, which appears to have been filed the 4th day of June last; and your petitioner finds he is in contempt to a serjeant at arms, upon a *non est inventus*, returned to a commission of rebellion, for not appearing thereto in time.

That your petitioner is desirous forthwith to discharge his said contempt, by paying the plaintiff his costs in respect thereof; and also of putting in his answer to the plaintiff's bill as soon as he may be, in regard your petitioner lives in the county of Stafford, and must answer by commission. *

Your petitioner therefore most humbly prays your honour, that the plaintiff's clerk in court, may forthwith deliver to your petitioner's clerk in court, a bill of costs, in respect of your petitioner's contempt; and that it may be referred to one of the masters of this court to tax the said bill, in case the said clerks in court differ in settling the same; and that upon your petitioners paying the said costs, so settled or taxed, all further proceedings upon the said contempt may be stayed, and in the mean time that your petitioner may be at liberty to take out a commission to plead, answer, or demur, not demurring alone, and have a month's time to retain the same.

And your petitioner will ever pray, &c. }

**Petition to be discharged out of the Custody of
the Serjeant at Arms.**

In Chancery.

Between George Birch, Plaintiff;

and

Henry Kensit, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That your petitioner is and hath been above a fortnight in the custody of the serjeant at arms attending this honourable court, for not answering the plaintiff's bill, which your petitioner hath since answered, and paid the costs of contempt; and the clerk in court for the plaintiff consenting to your petitioner's discharge.

Your petitioner therefore most humbly prays your honour, that your petitioner may be discharged out of the custody of the serjeant at arms, paying his fees.

And your petitioner shall ever pray, &c.

Petition that a *Feme Covert* Defendant may answer separate from her Husband.

In Chancery.

Between George Bowes, Plaintiff;

and

John Hill, and Jane his wife,

and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the said Jane, wife of the defendant John Hill,

Sheweth,

That the plaintiff has exhibited his bill in this honourable court against your petitioner, and her said husband

and others, to which your petitioner hath appeared, and taken a copy thereof.

Your petitioner humbly prays your honour, that she may be at liberty to put in her answer to the plaintiff's said bill, separate from her husband.

And your petitioner shall ever pray, &c.

Petition for a Commission to assign a Guardian for an Infant Defendant, and to take the Answer by such Guardian.

In Chancery.

Between William Wellingham,	Plaintiff;
and and	
John Smith, William Stead,	
and others,	Defendants.

To the right honourable the Master of the Rolls.

The humble petition of defendant William Stead, an infant.

Sheweth,

That the plaintiff having exhibited his bill in this honourable court against your petitioner, and others, your petitioner hath appeared thereto, and taken a copy thereof.

That your petitioner is an infant residing at White-well, in the county of Hertford.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to sue out a commission to assign him a guardian, and to take his plea, answer, or demurrer by such guardian, and that the plaintiff's clerk in court may, in

two days after notice hereof, give commissioners' names to your petitioner's clerk in court, or in default thereof, that your petitioner may have the said commission directed to his own commissioners.

And your petitioner shall ever pray, &c.

Petition to withdraw a Plea, or Demurrer.

In Chancery.

Between John Dermer,	-	Plaintiff;
and		
Timothy Potton,	-	Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That the plaintiff having exhibited his bill in this honourable court against your petitioner, your petitioner put in his plea, (or demurrer) thereto, since which your petitioner is advised to make other defence to the said bill.

Your petitioner therefore humbly prays your honour, that he may be at liberty to withdraw his plea (or demurrer) upon payment of 20s. costs to the plaintiff's clerk in court.

And your petitioner shall ever pray, &c.

A Petition to set down a Plea to be argued.

In Chancery.

Between John. Izzard,	-	Plaintiff;
and		
John Dynes,	-	Defendant.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the defendant,

Sheweth,

That the plaintiff having exhibited his bill in this honourable court against your petitioner, your petitioner put in his plea and answer thereto, which plea the plaintiff hath not yet set down to be argued.

Your petitioner therefore most humbly prays your honour, that the said plea may be set down to be argued next after the pleas and demurrers already set down.

And your petitioner shall ever pray, &c.

A petition to set down a demurrer is to the same effect.

Petition for Commission to examine Witnesses.

In Chancery.

Between Samuel Hare,	-	Plaintiff;
and		
John Thornton,	-	Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That this cause, being at issue, and the plaintiff not having obtained a commission for the examination of wit-

nesses therein, or applied for the same; and your petitioner having several material witnesses to examine, who reside in the country, without whose testimony he cannot hear the cause.

Your petitioner therefore most humbly prays your honour that he may be at liberty to take out a commission for the examination of his witnesses, returnable without delay; and that the plaintiff's clerk in court may, in four days, join and strike commissioners' names, with your petitioner, or in default thereof that your petitioner may have such commission directed to his own commissioners, and that he may have liberty to execute the same in term time.

And your petitioner shall ever pray, &c.

Petition to read Deeds, &c. at the Hearing by Consent, as if proved in the Cause.

In Chancery.

Between John Chedworth, and others, Plaintiffs;
and

James Hampton, clerk, and others, Defts.

To the right honourable the Master of the Rolls.

The humble petition of the defendants,

Sheweth,

That this cause being at issue, your petitioners are advised that it will be proper for them, at the hearing of this cause, to make use of an order, made in a cause, wherein the honourable William Bromley, deceased, and another, were plaintiffs, and Doddington Greville, and others, were defendants, by his honour the late Master of the Rolls, dated the 28th day of May, 1752; and also of the minutes of an order made in the same cause, dated the 18th day of June, 1752.

That the plaintiffs are consenting that indentures of lease and release, dated respectively the 9th and 10th days of January, 1723, the release mentioned to have been made between James Hampton, gent. of the first part ; and Elizabeth Hampton, the wife of the said James Hampton, of the second part, William Harner and Joseph Blisset, of the third part. And articles of agreement bearing date the 30th day of June, 1753, made between your petitioner, James Hampton, of the first part ; your petitioner, William Harner, of the second part ; and your petitioner, Henry Hampton, of the third part ; all in the pleadings in this case mentioned : and also a copy of the entry in the parish register of the burial of the said James Hampton, may be read at the hearing of this cause, as proved, without putting your petitioner to the expence of examining witnesses for that purpose.

Your petitioners therefore humbly pray, that they may be at liberty at the hearing of this cause, to read the said order and minutes, made in the above-mentioned cause, Bromley against Greville, and others, saving just exceptions ; and also to read the said several indentures of lease and release of the 9th and 10th days of January, 1723, the said articles of the 30th day of June, 1753, and the copy of the entry in the parish registry of the burial of the said James Hampton, as if proved by witnesses, the plaintiffs consenting thereto.

And your petitioners will ever pray, &c.

I do hereby consent to the prayer of the above petition, if your honour shall be pleased to order the same.

George Jackson, plaintiff's clerk in court.

Petition for his Honour to strike Commissioners' Names, the Plaintiff refusing so to do.

In Chancery.

Between Thomas Whetham, Plaintiff;
and
Samuel Chase, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That your petitioner obtained an order, dated the 24th day of April last, for a commission to examine witnesses, returnable without delay, and that the plaintiff's clerk in court, should in four days, after service thereof, join and strike commissioners' names, with your petitioner's clerk in court, which order was duly served on the 29th following.

That the plaintiff's clerk in court, did on the 30th, join with your petitioner's clerk in court, and named four commissioners, viz. Timothy Potton, John Swaine, Joseph Pedder, and Thomas Osborne, of whom your petitioner has struck out Timothy Potton and Joseph Pedder; and your petitioner named Samuel Hare, Thomas Godwin, William Crew, and William Thurston; but the plaintiff's clerk in court now refuses to strike your petitioner's names.

Forasmuch as your petitioner hath many material witnesses, as he is advised, to examine, and is desirous to speed his cause.

Your petitioner humbly prays that your honour would be pleased to strike out such two of your

petitioner's commissioners, as to your honour shall seem meet.

And your petitioner will ever pray, &c.

Samuel Hare.

Thomas Goodwin.

William Crew.

William Thurston.

Petition to enlarge Publication.

In Chancery.

Between Thomas Goodwin,	Plaintiff;
and	
William Crew,	Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That publication in this cause will pass by rule, on the 28th day of November instant, and your petitioner hath several witnesses to examine, whom he will not be able to examine before the expiration of the said rule.

Your petitioner therefore most humbly prays your honour, that publication in this cause may be enlarged till the first day of next term, so as not to hinder the plaintiff from setting down his cause (*if a commission to examine witnesses is necessary, a prayer to that effect should be added.*)

And your petitioner shall ever pray, &c.

Petition to set down a Cause for Re-hearing,
where a Defendant has made Default of Ap-
pearance at the Hearing.

In Chancery.

Between Sir Charles Farnaby, Plaintiff;
and

John Barry, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the defendant John Barry,
Sheweth,

That this cause came on to be heard on the 20th day
of January last, when in default of your petitioner's ap-
pearance, your lordship made the usual decree with re-
spect to your petitioner.

That your petitioner is willing to pay to the plaintiff
the costs of that day's attendance.

Your petitioner therefore most humbly prays
your Lordship, that some short day may be ap-
pointed for the hearing of this cause as to your
petitioner.

And your petitioners shall ever pray, &c.

Petition to advance a Cause for Hearing.

In Chancery.

Between Emma Hart, and others, Plaintiffs;
and .

John Cosens, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the defendants,
Sheweth,

That this cause stood in your lordship's paper of causes
for further directions, but did not come on: and, as it

is of very material consequence to your petitioners, to have it determined in the sittings before your lordship before the seals after term close.

Your petitioners humbly pray that your lordship would be pleased to order this cause to stand next after the short causes appointed for hearing to-morrow, the 24th instant.

And your petitioners will ever pray, &c.

Petition to set down a Cause for further Directions, after a Verdict obtained on the Trial of an Issue directed by the Decree.

In Chancery.

Between John Clark,

Plaintiff;

and

John Nightingale, and John Baron, Defts.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the defendant John Nightingale,

Sheweth,

That on the hearing of this cause, on the 12th day of March last, your lordship was pleased to order and decree that your petitioner, and the other defendant, John Baron, should proceed to a trial at law in the court of King's Bench, on the following issue, viz. (here state the issue) and your lordship did reserve the consideration of all further directions until after such trial should be had.

That the said issue came on to be tried at the sitting after the last term, at Westminster-hall, when your petitioner obtained a verdict.

Your petitioner therefore most humbly prays your lordship, that this cause may be set down to be heard on further directions next after the causes already set down before your lordship.

And your petitioner shall ever pray, &c.

Petition that Depositions taken in one Cause may be read at the Hearing of another Cause.(a)

In Chancery.

Between John Ord, Plaintiff;
and
Edward Lowe, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That Richard Highway, esq. a mortgagee of the premises in question, in this cause, in or about Easter term, 1807, exhibited his bill in this court against your petitioner, and the plaintiff above-named, to foreclose the premises in question in this cause, and issue being joined several witnesses were examined in the said cause.

Your petitioner therefore humbly prays your honour, that he may be at liberty, at the hearing of this cause, to read and make use of the said depositions taken in the said cause, saving just exceptions.

And your petitioner will ever pray, &c.

(a) Depositions of plaintiff's witnesses ordered to be read at the trial of the issue in case such witnesses or either of them shall be dead at the time of the trial; or shall be proved at such trial to be in such a state of health, as not to be capable of attending. *Palmer v. Lord Aylesbury*, 15 Ves. 176.—*Ed.*

Petition that an Answer taken in one Cause, may be read and made Use of at the Hearing of another Cause.

In Chancery.

Between Slingsby Baynes,

and

Plaintiff;

William Baynes, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendants,

Sheweth,

That your petitioners having exhibited their bill in this court against the above-named plaintiff for a discovery of their right and title to the several premises in question in this cause, to which the said plaintiff put in his answer.

Your petitioners therefore humbly pray your honour, that they may be at liberty to read, and make use of the plaintiff's answer put in to your petitioners' said bill, at the hearing of this cause.

And your petitioners will ever pray, &c.

**Petition for a Commission to assign a Guardian
for a Defendant, being a Person of unsound
Mind, by whom such Defendant may answer
and defend the Suit.**

In Chancery.

Between Stephen Swaine, and others, Plaintiffs;
and

John North, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the above-named defendant,
Sheweth,

That the plaintiffs having filed their bill of complaint in this honourable court against your petitioner, and others,

but your petitioner being a person of unsound mind, is incapable of managing his affairs, or putting in an answer to the said bill, and defending the said suit, without a guardian being appointed to him for that purpose, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your honour, that he may be at liberty to sue out a commission to assign him a guardian, and to take his plea, answer, or demurrer, by such guardian, and that the plaintiffs' clerk in court may, in two days after notice hereof, give commissioners' names to your petitioner's clerk in court, or in default thereof, that your petitioner may have the said commission directed to his own commissioners.

And your petitioner shall ever pray, &c.

Petition of a Defendant, to be discharged out of the Fleet Prison, upon Payment of his Fees, by Consent of the Plaintiff.

In Chancery.

Between Thomas Harwood, Plaintiff;
and

John Wilson, Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the defendant,
Sheweth,

That the plaintiff filed his bill of foreclosure against your petitioner, who now remains a prisoner in the Fleet Prison, and has so been for these two years last past, under a commitment for a contempt to a serjeant at arms,

in disobedience of an order made in this cause, for payment of the principal, interest, and costs due to the plaintiff.

That the plaintiff is willing that the costs of the said contempt, amounting to 18*l.* 10*s.* 4*d.* shall be added to the mortgage money; and your petitioner hath executed a deed, whereby the costs are charged thereon.

And in regard, the plaintiff by his clerk in court, hath signed his consent to this petition.

Your petitioner therefore most humbly prays your Lordship, that he may be discharged out of the custody of the warden of the Fleet, paying the said warden his fees.

And your petitioner will ever pray, &c.

I consent to the prayer of this petition, if your Lordship shall think fit to order the same.

John Radcliff, plaintiff's clerk in court.

Petition of a Defendant for a *Habeas Corpus cum Causis*, at the Instance of the Party taken upon an Attachment, in order that he may be turned over to the Fleet Prison.

In Chancery.

Between Thomas Darton, Plaintiff;
and

William Osborne, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That the plaintiff having filed his bill against your petitioner, he has appeared thereto and taken a copy.

But your petitioner not having put in his answer in proper time, an attachment issued against him, upon which he has been arrested, and now remains in the custody of the sheriff of Middlesex, charged with other detainers.

Your petitioner therefore most humbly prays your honour, that a writ of *habeas corpus cum causis*, may issue out of this honourable court, directed to the said sheriff of the county of Middlesex, thereby commanding him to bring the body of your petitioner into this honourable court, on Tuesday next the 16th day of July instant, in order that your petitioner may answer his said contempt, and be discharged therefrom, or may otherwise be dealt with according to law.

And your petitioner will ever pray, &c.

Ordered that a writ of *habeas corpus cum causis*, do issue, directed to the sheriff of Middlesex, thereby commanding him to bring the body of the petitioner into this court, on Tuesday next, the 16th day of July instant, in order that he may clear his contempt, and be discharged therefrom; and otherwise be dealt with according to law.

10th July, 1816.

Petition for Plaintiff to be admitted to sue *in Forma Pauperis*.

In Chancery.

Between William Haynes, Plaintiff;
and

Thomas Pindock, clerk, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner having filed his bill in this honourable court against the said defendant, thereby setting

forth, that (here state shortly the plaintiff's title to the matters in question, as stated in the bill.)

That your petitioner, by reason of his poverty, as appears by the annexed affidavit, is utterly unable to prosecute his said suit, unless he is admitted to do so in *forma pauperis*.

Your petitioner therefore humbly prays your honour, that he may be admitted to prosecute his said suit *in forma pauperis*, and that Mr. Allan may be assigned his counsel, and Mr. Sewell, his six clerk.

And your petitioner shall ever pray, &c.
Counsel's certificate to be written at the foot of the petition.

I humbly conceive that the plaintiff has just cause to be relieved, touching the matters of this petition, and for which he has exhibited his bill.

14th June, 1816.

James Gordon.

See the form of the affidavit to be annexed to this petition, under title "Affidavits."

Petition of a Defendant to be admitted to defend *in Forma Pauperis*.

In Chancery.

Between John Peters, Plaintiff;
and
Stephen Swaine, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That your petitioner is served with process to appear to and answer the plaintiff's bill, but by reason of his ex-

treme poverty is unable to make his defence thereto, if not permitted to defend *in forma pauperis*, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your honour to admit him to defend this suit *in forma pauperis*, and to assign him for his counsel Mr. Roupell, and Mr. Sewell for his six clerk.

And your petitioner will ever pray, &c.

N. B. No certificate of counsel is necessary to ground an order on this petition; the defendant being compulsorily brought into court, must be enabled to make the best defence the case will admit of; but the affidavit and petition must be upon the usual stamps, and the oath is paid for upon swearing the affidavits.

Petition to set down a Cause for Hearing, where the Bill is not to be taken *pro confesso*, and for the Plaintiff's Clerk in Court to attend with the Record of the Bill.

In Chancery.

Between John Brickdale, Plaintiff;
and
Edward Hill, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That the defendant, Edward Hill, having been served with process, to appear to, and answer, the plaintiff's bill, appeared, but stood out all process of contempt, to a sequestration, for want of his answer: that a commission of sequestration, under the seal of this court, has been awarded against him, notwithstanding which the said defendant still persists in his contempt.

Your petitioner therefore prays your honour, that this cause may be set down to be heard before your honour, next after the causes already appointed, in order that the plaintiff's bill may be taken *pro confesso*, and for that purpose, that the plaintiff's clerk in court may attend at the hearing, with the record of the plaintiff's bill.

And your petitioner will ever pray, &c.

Petition to set down Cause to be re-heard on further Directions, where a Party made Default upon Payment of Costs of the Day.

In Chancery.

Between Thomas Halford, and others, Plaintiffs;
and

George Stephens, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendant, George Stephens.
Sheweth,

That this cause came on to be heard for further directions, reserved by the decretal order, on the 14th of December, instant, and your petitioner not appearing by counsel, on the said hearing, through a mistake between your petitioner's former solicitor, and your petitioner's present solicitor, the order on the said hearing for further directions, was made *ex-parte*, as against your petitioner.

That your petitioner is since advised, it is material for him to have this cause again set down to be heard before your honour, as to such order for further directions.

Your petitioner therefore humbly prays your honour that he may be heard by counsel as to the said order for further directions, and that for

that purpose, the said cause may be set down again to be heard before your honour, your petitioner hereby consenting to pay to the plaintiff and the other defendants, the costs of the day, occasioned by your petitioner's said default.

And your petitioner will ever pray, &c.

The Form of a Petition for a Solicitor to deliver his Bill, and to tax the same.

In Chancery.

Between Gravely Hurst,

Plaintiff;

and

Pilkington Morgan, clerk, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant,

Sheweth,

That your petitioner employed Mr. Richard Tristram, one of the solicitors of this honourable court, to defend this suit, and your petitioner also employed him in divers suits at law, and in other matters, as your petitioner's solicitor and attorney.

That the said Mr. Tristram hath from time to time, in the course of his transacting your petitioner's business, as an attorney and solicitor, got into his hands and received divers sums of money, to a considerable amount, belonging to your petitioner; and much more than sufficient, as your petitioner apprehends, to pay and satisfy his bill of fees and disbursements.

That your petitioner hath frequently applied to and requested the said Mr. Tristram to make out his said bill of fees and disbursements, and to deliver the same to your petitioner, together with all books, deeds, papers, and writings, belonging to your petitioner, which he hath

hitherto declined to do, although your petitioner has offered, and still offers to pay him what, if any thing, appears to be justly due and owing to him for his said bill.

Your petitioner therefore humbly prays your honour, that upon your petitioner's submitting to pay the said Mr. Tristram what shall appear to be due to him, upon taxation of his said bill, as attorney and solicitor to your petitioner, that the said Mr. Tristram may be ordered in a fortnight after notice hereof, to deliver to your petitioner, a bill of all such fees and disbursements as he claims to be due to him, in this and all other causes, suits, and matters, wherein he has been employed as solicitor or attorney for your petitioner. And that it may be referred to one of the masters of this court, to tax such bill; and that your petitioner, and the said Mr. Tristram, may produce before the said master, upon oath, as the said master shall direct, all books, papers, and writings, in his custody or power, relating to such bill, or any of the items or charges therein; and that your petitioner, and the said Mr. Tristram, may be examined upon interrogatories touching the same, and otherwise, as the said master shall direct; and that upon your petitioner, pursuant to his said submission, paying to the said Mr. Tristram what shall appear to be due to him, on taxation of the said bill; and upon the payment thereof, or in case the said bill appears to be already paid, that the said Mr. Tristram may deliver to your petitioner, upon oath, all deeds, papers, and writings, in his custody or power, belonging to your petitioner; and if it shall appear that such bill is over paid, that the said Mr. Tristram may be ordered to refund and pay unto your petitioner what shall appear to have

been overpaid ; and that all proceedings at law against your petitioner, on account of the said bill, be stayed until the said master shall have made his report.

And your petitioner will ever pray, &c.

The Form of a Petition to tax a Solicitor's Bill delivered.

in Chancery.

Between John Whitehead, clerk, Plaintiff;
and

John Dimsdale, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioner employed Mr. William Cooper, one of the solicitors of this honourable court, to prosecute this suit, and to defend divers other suits and matters, as your petitioner's attorney and solicitor.

That the said Mr. Cooper hath delivered unto your petitioner a bill of his fees and disbursements, in which your petitioner is advised there are many extravagant and unreasonable charges; and the said Mr. Cooper threatens to proceed at law against your petitioner to recover the same.

That by a decree made therein, this cause stands referred to Sir William Pepys, bart. one of the masters of this court.(a)

Your petitioner therefore most humbly prays your honour, that upon your petitioner's submitting to pay to the said Mr. Cooper, what shall be due to

(a) This must depend upon the state of the cause.

him, on the taxation of his said bill, it may be referred to the said master Sir William Pepys, to tax the same ; and that your petitioner, and the said Mr. Cooper, may produce before the said master, upon oath, as the said master shall direct, all books, papers, and writings, in their custody or power, relating to the said bill, or to any of the items or charges therein, and may be examined upon interrogatories touching the same, and otherwise, as the said master shall direct ; and that upon your petitioner, pursuant to his said submission, paying to the said Mr. Cooper what shall appear due to him on such taxation ; and upon payment thereof, or in case the said bill appears to be already paid, that the said Mr. Cooper may be ordered to deliver unto your petitioner, upon oath, all deeds, papers, and writings, in his custody or power, belonging to your petitioner ; and if he is overpaid, that he may refund and repay your petitioner what he is so overpaid ; and that all proceedings at law against your petitioner, on account of the said bill, may be stayed until the said master shall have made his report.

And your petitioner will ever pray, &c.

The Form of a Petition to tax a Bill of Fees and Disbursements, delivered for Agency Business done in Chancery and at Law, as between Attorney or Solicitor and Agent, and for the Delivery and Taxation of a Bill, for Business done subsequent to the Bill delivered.

In Chancery.

Between Thomas Mutton, Plaintiff ;
and
George Andrews, Defendant.

To the right honourable the Master of the Rolls.

The humble petition of George Groome, esq. attorney at law, and a solicitor of this honourable court,
Sheweth,

That your petitioner for some time past employed Mr. John West, one of the solicitors of this court, to prosecute this suit, and to prosecute and defend divers other suits and actions at law, and to transact other law matters as your petitioner's agent.

That the said Mr. West hath made out and delivered a bill of fees and disbursements, as agent to your petitioner in this and other suits and matters, which your petitioner conceives to be very extravagant and overcharges: and although the said Mr. West has received divers sums of money of your petitioner, and on your petitioner's account, yet he threatens to proceed at law against your petitioner for the recovery of his said bill; and the said Mr. West alledges, that he hath a further bill of fees and disbursements for agency business, done subsequent to the said bill delivered, which he refuses to deliver until the former bill is paid.

Your petitioner therefore prays your honour, that
upon your petitioner submitting to pay the said

Mr. West what shall appear to be due to him, upon the taxation of his said bill, that the said Mr. West may be ordered, in a fortnight after notice hereof, to deliver to your petitioner a bill of all such fees and disbursements as he claims to be due to him in this and all other causes, suits, and other matters wherein he has been employed, as attorney, or solicitor and agent, for your petitioner, subsequent to the said bill delivered, and that it may be referred to one of the masters of this court to tax such bills; and that your petitioner, and the said Mr. West may produce before the said master, upon oath, as the said master shall direct, all books, papers, and writings, in their custody or power, relating to the said bills, or to any items or charges therein; and that your petitioner, and the said Mr. West, may be examined upon interrogatories touching the same, and otherwise, as the said master shall direct; and that upon your petitioner, pursuant to his said submission, paying to the said Mr. West what shall appear to be due to him on taxation of the said bill, or in case the said bill appears to be already paid, that the said Mr. West may deliver to your petitioner, upon oath, all books, papers, and writings, in his custody or power, belonging to your petitioner; and if it shall appear that such bill is overpaid, that the said Mr. West may be ordered to refund and pay unto your petitioner what shall appear to have been overpaid; and that all proceedings at law against your petitioner, on account of the said bill, be stayed until the said master shall have made his report.

And your petitioner will ever pray, &c.

The Form of a Petition for the Costs of Taxation
of a Solicitor's Bill, where more than One-sixth
Part has been taken off by the Master.

In Chancery.

Between George Lowe, and others, Plaintiffs;
and

John Cary, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff,

Sheweth,

That your petitioners, some time since, employed Mr. John Smith, one of the solicitors of this honourable court to prosecute this suit.

That by an order made in this cause, dated the 2d of March, 1809, the said Mr. Smith was ordered, within a fortnight after notice thereof, to deliver to your petitioners a bill of all such fees and disbursements as he claimed to be due to him in this and all other causes and matters, wherein he had been employed as attorney or solicitor for your petitioners; and it was also ordered, that it should be referred to Mr. Stratford, one of the masters of this court, to tax the same, with the usual directions.

That the said master, by his certificate, dated the 25th of March, 1816, certified, that, pursuant to the said order, he had proceeded on the taxation of the said bill of fees and disbursements; and that the said bill amounting to 126*l.* 4*s.* 2*d.* he had taxed at the sum of 81*l.* 3*s.* 4*d.* as by his said certificate herewith left appears.

That more than a sixth part of the said bill of fees and disbursements hath been taken off upon such taxation.

Your petitioners therefore pray your honour, that it may be referred back to the said Mr. Stratford, to tax the petitioners their costs of the taxation of the said Mr. Smith's bill of fees and disburse-

ments; and that the said Mr. Smith may be ordered to pay unto your petitioners, or to Mr. Bicknell, their present solicitor, such costs when taxed.

And your petitioners will ever pray.

Petition for Payment of a Sum of Money to a Clerk in Court, the Party to whom it was ordered to be paid being abroad, and where a Letter of Attorney could not be executed.

In Chancery.

Between John Fuller, Thomas Duke,
and others, Plaintiffs;
and
John Duke, and others, Defendants.

To the right honourable the Master of the Rolls.
The humble petition of the plaintiff, Thomas Duke,
Sheweth,

That by an order made in this cause, bearing date the 24th day of November last, it was ordered that out of the sum of 94*l.* 16*s.* 5*d.* cash in the bank in this cause, under the title, Duke against Pretty, your petitioner should be paid the sum of eighty pounds, and for that purpose, the accountant general was to draw on the Bank.

That your petitioner is a lieutenant in the army in Lord Cornwallis's regiment, and the said 80*l.* is intended to purchase a captain lieutenancy for your petitioner in the said regiment, and for that purpose the said 80*l.* must be immediately paid.

That your petitioner is abroad at Gibraltar, and cannot execute a letter of attorney, and return the same in time to answer the purpose for which the said 80*l.* is intended.

Your petitioner therefore humbly prays your honour, that the said sum of 80*l.* directed to be paid to your petitioner may be paid to Mr. Joseph Blisset, his clerk in court, or the agent of the regiment for your petitioner's use.

And your petitioner shall ever pray, &c.

5th Decr. 1768. Upon reading the said order of the 24th day of November last, let the said sum of eighty pounds be paid to Mr. Joseph Blisset, the petitioner's clerk in court for his use.

Thos. Sewell.

Petition by the Executor of a Solicitor to be paid the Costs due to the Testator, and that the former Order for Payment may be varied in that Respect.

In Chancery.

Between William Robinson and Catherine Howe,
sole executrix of Samuel Purlewent,
deceased - Plaintiffs;
and

Henry Harrington, and others, Defendants.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the said Catherine Howe,
Sheweth,

That by the decree made on the hearing of this cause, the 30th day of June, 1755, it was ordered that it should be referred to Mr. Harris, then one of the masters of this court, to take an account of what was due to the several defendants, the mortgagees, for principal and interest on

their respective mortgages, and to tax them their costs of this suit and at law ; and that the said master should also take an account of the rents and profits of the premises comprised in the defendants, the Nicholls's mortgage, which had been received by the said defendant ; and that what should be coming on the said account of rents and profits should be deducted out of what should be found due to the said defendants, the Nicholls's, for principal, interest, and costs, as aforesaid. And it was further ordered that the said master should likewise take an account of what was due for principal and interest to the several judgment creditors who were parties to this suit, and also to the several other judgment creditors of the defendant, Henry Harrington ; and all the said judgment creditors were to be at liberty to come in before the said master, and prove their judgments. And the said master was to state the priorities of the several mortgages, incumbrances, and judgments, and by the consent of the defendants, the Nicholls's and Backwell, the mortgagees, by their counsel, and of the defendant Thomas Carew, the only acting executor of John Carew, esq. deceased, another mortgagee, signified by his clerk in court having signed the register's book, it was further ordered, that the estate in question should be sold with the approbation of the said master, and that the money arising by sale of the respective parts of the estate in question, comprised in the mortgages and securities for such mortgages, should be applied in satisfaction of the money due on the respective mortgages, according to their respective priorities, and that the money arising by the said sale should be applied in payment of the judgment creditors according to their respective priorities, and by consent ; it was further ordered, that the bills of revivor brought by the defendants, the Nicholls's, and the original bill brought by their testator Joseph Nicholls, should stand dismissed of this court, and all parties to that suit, except the

defendant Henry Harrington, were to be paid their costs of that suit, to be taxed by the said master out of the money arising by of the said sale. And if there should be any surplus thereof, it was further ordered, that the same should be paid to the said defendant Henry Harrington ; and that the plaintiff, and the defendant, the judgment creditors, should be paid their costs at law and of this suit to that time, to be taxed by the said master, out of the estate ; and the consideration of subsequent costs, and all further directions, were reserved until after the said master should have made his report.

That by an order made in this cause, bearing date the 18th day of February, 1777, it was ordered that the master to whom this cause now stands referred, should be at liberty to make a separate report of the plaintiffs' costs to the hearing of this cause, and that the same when taxed, should be paid out of the sum of £1064 cash in the bank, in this cause : and for that purpose the said accountant-general was to draw on the bank according to the form prescribed by the act of parliament for the relief of the suitors of this court, and the general rules and orders of this court in that case made and provided.

That by the master's report, bearing date the 24th day of February, 1778, made in pursuance of the said last mentioned order, the said master hath certified that he had been attended by the clerks in court, and solicitors on both sides, and in their presence had considered of the plaintiffs, their said bills of costs at law, and of this suit, to the hearing thereof, and the plaintiffs, their said bill of costs at law, amounting to 105*l.* 2*s.* 2*d.* which he taxed at 71*l.* 18*s.* 4*d.* and their said bill of costs of this suit, to the hearing thereof, amounting to 236*l.* 15*s.* 8*d.* which he taxed at 154*l.* 10*s.* which said costs so taxed amounted together to the sum of 226*l.* 8*s.* 4*d.* and was to be paid in such manner as was directed by the said order, dated the 18th day of February, 1777.

That your petitioner is the sole executrix and representative of Mr. Samuel Purlewent, deceased, who was one of the plaintiffs, and also the solicitor in this cause.

That the said Samuel Purlewent, lived till after the decree was pronounced in this cause.

That by the order made in this cause for a separate report, the costs are directed to be paid to the plaintiffs generally, and not to your petitioner as the representative of the said Samuel Purlewent.

That the said Samuel Purlewent, your petitioner's testator, having been at the sole expence of carrying on this suit up to the time of the decree, to which time the costs are directed to be paid, except the sum of fifty pounds which he received from William Robinson, the co-plaintiff in this cause; and forasmuch as the bill of costs of your petitioner's testator as between solicitor and client will amount to considerably more than the costs taxed in this cause.

Your petitioner therefore humbly prays your lordship, that so much of the said order of the 18th day of February, 1777, which relates to the payment of the costs to the plaintiffs generally may be varied; and that instead thereof, the said costs both at law and in equity may be directed to be paid to your petitioner, your petitioner hereby submitting to allow in account to the said William Robinson, the other plaintiff in this cause, the sum or sums of money which may have been received by the said Samuel Purlewent, deceased.

And your petitioner shall ever pray, &c.

The Form of a Petition, praying a Writ of *Naveat Regno*.

In Chancery.

Between William Clymer, and others, Plaintiffs;
and
Walker Stroud, - Defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners, together with the defendant, being owners of a vessel called Cape Mount, agreed to fit her out for a voyage from Bristol to Africa, and from thence to Jamaica, and from thence to return home to Bristol, touching at Barbadoes; and that the defendant Walker Stroud should be master of the said vessel for the said voyage; and accordingly the said defendant, in the month of April, 1800, proceeded on the said voyage with the said vessel, loaded with a cargo of goods belonging to the said owners, in proportion to their respective shares in the said ship or vessel; and the defendant sold and disposed of the said cargo on the coast of Africa, and therewith purchased negroes, gold dust, elephants' teeth, and other merchandize; and that instead of proceeding to Jamaica, according to orders, the said defendant went to the island of Antigua, and there sold and disposed of the whole cargo, and with the proceeds arising from such sales, bought other goods and merchandize at Antigua aforesaid; and therewith purchased a sloop, and loaded the same, and the said vessel Cape Mount, and proceeded again to the coast of Africa, in the month of January, 1801, and on or about the 20th of July following returned again to Antigua with the said vessel Cape

Mount, and a cargo of negroes, which the said defendant Walker Stroud, likewise there disposed of.*

That upon a fair and just account to be made up and stated, between your petitioners and the defendant, as part-owners of the said vessel Cape Mount, and her cargo, and for monies had and received by the defendant for such goods and merchandize, and the proceeds thereof, the said defendant Walker Stroud, is indebted to your petitioners in the sum of £2000 and upwards, for which your petitioners have not received any security or satisfaction.

That your petitioners are informed, that the said defendant Walker Stroud is soon going abroad to parts beyond the seas, as a passenger, to settle and reside at Boston, in New England, and has lately declared his intention so to do, as well to your petitioner, William Clymer, as to other persons; and is collecting and gathering in his debts and effects for that purpose, as by the affidavit annexed appears.

That your petitioners, on the 1st of this instant September, filed their bill in this honourable court against the said defendant, stating to the purport and effect hereinbefore set forth, and praying, that the defendant might come to a just and fair account with your petitioners, touching the matters hereinbefore mentioned, and might pay what shall be justly due to your petitioners for their respective shares of the proceeds of such outward-bound cargo: and that the said defendant might be stayed and restrained from departing out of this kingdom by his majesty's writ of *ne exeat regno*, as by the six clerk's certificate appears.

That in case the said defendant goes beyond sea, he will not return again; and your petitioners will be in great danger of losing the whole of the said debt, to the amount of £2000 and upwards.

Your petitioners therefore pray your honour

that his majesty's writ of *ne exeat regno*, may issue against the defendant, for stay of the said defendant, Walker Stroud's departure out of the jurisdiction of this honourable court; and that the same may be marked for the sum of £2000, or such other sum as to your honour shall seem meet.

And your petitioners will ever pray, &c.

The Form of a Petition for a Writ of *Ne exeat Regno*.

In Chancery.

Between Edward Nicholas, and others, Plaintiffs;
and

Thomas Duncombe, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the plaintiffs,

Sheweth,

That your petitioners together with Thomas London, deceased, and the defendants, Samuel Peach, Thomas Pearce, William Gelittes, and David Duncombe, father of the defendant, Thomas Duncombe, being joint-owners of a vessel called the Polly, agreed, about September, 1792, to fit her out for the coast of Africa and South Carolina; and accordingly procured a cargo for the said coast of Africa, the charge of which ship, outfit, and cargo, together with the insurance thereof, cost the said owners the sum of £14,210, or thereabouts; and appointed the said Thomas Duncombe commander of the said vessel, and gave him directions and instructions in writing for his conduct during the said voyage, which

were chiefly, that he should proceed to Africa, and there, with his said cargo, purchase slaves, which he was thereby given to understand the said owners expected should be 500, or at least 450 in number, which he should carry to Charlestown, South Carolina; and there apply to Mr. John Neufville for sale thereof, and take his obligation for the nett proceeds in bills payable at six, nine, and twelve months sight.

That the said defendant Thomas Duncombe, left the said coast of Africa with (as he alledged) 437 slaves, but instead of conveying the same to South Carolina, he stopped at Barbadoes, and, as he alledges, had then no more than 341 slaves remaining, the rest having died on the voyage.

That the said Thomas Duncombe afterwards conveyed 283 slaves, which he alledged, were all that were then remaining, to the island of St. Vincent, where he sold 227 of them to Messrs. Bailie, Campbell, and Keffey, at £28 a head, and the remaining 56 at considerable lower prices, and took bonds and notes payable to himself, and not to your petitioners, from the several persons to whom he sold the said slaves, for the several sums for which he sold the same.

That the said Thomas Duncombe hath confessed, by a letter, in his own hand-writing, that his cargo was well esteemed, and thought a good assortment.

That at that time slaves sold at South Carolina, at an average of £45 a head; and from the good assortment of the said cargo belonging to the plaintiffs as aforesaid, the plaintiffs' said cargo of slaves were likely to have sold at South Carolina for above £45 a head.

That by the means aforesaid, your petitioners, instead of gaining any profit by the said voyage, are at present likely to be very considerable losers thereby, the whole produce of the said slaves being, by the said Thomas Duncombe's account, only £7,274.

That by the accounts your petitioners have received from their correspondent in South Carolina, the price of slaves had been long before August 1792 (when the said Thomas Duncombe ought to have been with his slaves at South Carolina, instead of Barbadoes,) and was then, and hath ever since continued at £45 a head on an average.

That your petitioners therefore compute, that if the said slaves had been, pursuant to your petitioners' said directions, carried to South Carolina, the same would have sold for about £45 per head, which would have made a difference to your petitioners of £13,592.

That your petitioners have great reason to believe, from the said Thomas Duncombe's own letters, and for many other reasons, that the said Thomas Duncombe never intended to go to South Carolina; but that he was resolved to go to St. Vincent, and sell his cargo to Messrs. Bailie and Co.; and that in so doing he had some views to his own private advantage thereby.

That upon the said Thomas Duncombe's return home from the said voyage, your petitioners complained greatly of the misconduct of the said Thomas Duncombe, and threatened to call him to account for the same. But by the interposition of his friends, they at last agreed to refer the same to the arbitration of indifferent persons, which the said Thomas Duncombe hath refused to agree to, and hath filed his bill in this court against your petitioners, and the several other owners of the said vessel for an injunction to stay your petitioners from proceeding at law against him, on account of these several matters aforesaid.

That your petitioners, considering themselves greatly injured by the said Thomas Duncombe, did, in the lifetime of the said Thomas Longdon, with his concurrence, apply to the said defendants, David Duncombe, Samuel Peach, and William Gelittes, and requested them to join in an action at law against the said Thomas Duncombe,

in order to be relieved against the said Thomas Duncombe, on account of the several matters aforesaid ; but they refused to join in such action, or in any manner to compel the said defendant to make your petitioners and themselves satisfaction for the injuries aforesaid ; and your petitioners have, since the death of the said Thomas Longdon (which happened lately) applied to the defendants, Thomas Whitehead and George Champion, his executors, for the same purpose, but they refused to join in the same, or in any suit in equity for the same purpose.

That your petitioners, under the circumstances aforesaid, have exhibited their bill in this court against the said several defendants, stating (amongst others) the several matters hereinbefore mentioned ; and praying, that the said defendant Thomas Duncombe, may be compelled to produce the log-book, or ship's journal, wherein are entered the daily transactions that happened in the course of the said voyage, and from which your petitioners would be able to have an account of many, if not all, the facts, which they are now obliged to seek a discovery of by their bill, and which log-book the said Thomas Duncombe pretends is lost or destroyed, and that the said Thomas Duncombe may set forth an account of all his several transactions and conduct throughout the voyage, and may pay and satisfy to your petitioners, and the other part-owners of the said vessel, all such sums of money for which the cargo thereof hath been sold, and which he hath received by sale thereof ; and that he may make them a reasonable compensation for the loss and damages which they have sustained by such his fraudulent conduct as aforesaid ; and that it may be referred to one of the masters of this court to inquire into, or that an issue at law may be directed to try and ascertain the question of such damages ; and that one or more commissions may issue for examining such of their witnesses as reside abroad ; and that your petiti-

oners may be at liberty to examine, *de bene esse*, such of their witnesses as are going abroad beyond seas, and that his majesty's writ of *ne exeat regno* may issue against the said defendant, Thomas Duncombe, until he has appeared to and answered the said Bill, and for further relief.

That your petitioners are advised, that by reason of the refusal of the said David Duncombe, Samuel Peach, William Gelittes, Thomas Whitehead, Thomas Martin, and George Champion, to join in any action at law for recovering the loss aforesaid; and for the several reasons herein before mentioned, your petitioners have no remedy but in this court.

That it is recited, in an order obtained by him, the said Thomas Duncombe, against your petitioners, and served on their clerk in court, that it appeared by affidavit of the said Thomas Duncombe, that he, the said Thomas Duncombe, was engaged as commander on board a vessel for the coast of Africa; and that Cornelius Taylor, Joseph Williams, and Edward Jones, three material witnesses for the said Thomas Duncombe, were engaged to sail with him in the said ship.

That the aforesaid sum of £3,592, your petitioners' computed loss as aforesaid on the sale of the said negroes being added to the sum of £7,274, for which the said Thomas Duncombe sold the said slaves, they make together the sum of £10,866, which the said Thomas Duncombe is answerable to your petitioners for, as by affidavit annexed appears.

Your petitioners therefore most humbly pray your lordship, that his majesty's writ of *ne exeat regno* may issue against the defendant Thomas Duncombe, until answer and further order; and that the same may be marked for the sum of £10,866, or such other sum as to your lordship shall seem meet.

And your petitioner shall ever pray, &c.

PETITIONS.

Petition for Increase of Maintenance of Infants.

In Chancery.

Between Stephen Poyntz and Mary Poyntz,
infants ; by their next friends, Plaintiffs ;
and
John Whitehurst, and John Bury,
and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendants, John Whitehurst, and John Bury:

Sheweth,

That by an order of this court, bearing date the 20th day of March, 1811, made in this cause, it was, amongst other things, ordered, that it should be referred to Mr. Steel, one of the masters of this court, to consider what was proper to be allowed for the maintenance and education of the plaintiff, the infant, for the time past, from the death of her father, Newdigate Poyntz, the testator in the pleadings of this cause named, and for the time to come ; and that the said master should state the same, with his opinion thereon to the court ; and that after the master should have made his report, such further order was to be made as should be just.

That in pursuance of the said order, the said master made his report, bearing date the 25th day of July, in the said year 1811, and thereby certified, that he had considered of proposals laid before him, on behalf of the defendants John Whitehurst and John Bury, respectively, whereby it was set forth, that the plaintiff Stephen Poyntz, would, on his arrival at 21 years of age, be entitled to a real estate at Hexton, in the county of Hert-

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ford, of the yearly value of £500 and upwards, and would also, at the said age, be entitled to the residue of the personal estate of his said father, consisting of the several particulars therein-mentioned, the annual interest of which amounted together to the sum of 870*l.* 14*s.* (but which residue was subject to the payment thereof of £5000 to the plaintiff Mary Poyntz); and would also be entitled to a legacy of £2000 under his mother's will, the annual interest of which was £80, which, with the said sum of 870*l.* 14*s.* made the annual sum of 950*l.* 14*s.* subject as aforesaid, exclusive of his real estate; and that the said plaintiff Mary Poyntz, will be entitled at 21 years of age to £5000 under her father's will, and to £6000 under her mother's will, the whole annual interest of which amounted to £440; and that he did conceive that after the rate of £60 a year was proper to be allowed for the maintenance and education of the plaintiff Stephen Poyntz, the infant, for the time past, from the 28th day of July, 1806, the time of the death of his mother, to the 9th day of May, 1809; when he was put to school; and that after the rate of £100 a year was proper to be allowed for his maintenance and education, from that time until he shall be put to Harrow or Eaton school, and from that time, and for the time to come, he conceived that after the rate of £180 a year was proper to be allowed for his maintenance and education.

And the master did also conceive, that after the rate of £90 a year was proper to be allowed for the maintenance and education of the said plaintiff, Mary Poyntz, the infant, for the time past, from the said 28th day of July, 1806, until she should be placed at Mrs. Stevenson's school in Queen-square, and from that time, and for the time to come, that £145 was proper to be allowed for her maintenance and education.

That by an order of this honourable court, made in this cause, and bearing date the 27th day of April, 1812, it

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was ordered, that the said master's said report should be confirmed; and that the said several sums allowed for the maintenance and education of the said plaintiffs, the infants, be paid according to the said master's said report.

That it is intended to place the plaintiff Stephen Poyntz, the infant (who is now of the age of 15 years or thereabouts) at Eaton, soon after Christmas next, to be there educated under the care and direction of a private tutor, which will be attended with a considerable additional yearly expence. And,

It is likewise found requisite, at the same time, to take the plaintiff, Mary Poyntz, the infant (who is now of the age of 16 years, or thereabouts) from the school where she now is, and to place her in a gentleman's family, in order to teach her domestic economy, and to enable her to acquire a genteel behaviour suitable to her fortune and condition in life, which will likewise be attended with a considerable yearly expence.

That your petitioners humbly conceive the sums already allowed for the respective maintenance and education of the said plaintiffs, to be inadequate to those purposes, regard being had to their fortunes and circumstances.

Your petitioners therefore humbly pray your honour, that it may be referred to the said master, to consider what is proper to be further allowed, in addition to what is already allowed, for the maintenance and education of the said plaintiffs, the infants, regard being had to their fortunes and circumstances.

And your petitioner will ever pray, &c.

**Petition for Sale of Stock to place out a Party
Apprentice upon the Master's Report of its
being proper, &c.**

Between John Fuller, Esq. Geo. Duke, and others,
Plaintiffs;

and

Ann Pretty, and others, - Defendants.

The humble petition of the plaintiff George Duke,

Sheweth,

That by an order of the 27th of July, 1815, it was referred to Mr. Stratford, the master to whom this cause stands referred, to consider whether it would be proper to place out your petitioner an apprentice, and what sum of money would be necessary for that purpose, and out of what fund the same could be properly raised and paid.

That the said master by his report, bearing date the 5th day of this instant August, hath certified that he approves of Mr. Nicholas Purdue Smith as a proper person with whom to place out your petitioner apprentice, and conceived that £200 is a reasonable and proper sum to be paid to the said Mr. Smith, on his taking your petitioner apprentice, and that 48*l.* 2*s.* 10*d.* be advanced for furnishing your petitioner with cloaths and other necessaries, and that from the 3d day of January, 1814 to which time the former allowance at the rate of 40*l.* a year has been paid, the yearly sum of 40*l.* is reasonable and proper to be allowed for your petitioner's pocket expences, cloaths, washing, and other necessaries.

And by his said report stated, that by a settlement dated the 8th of December, 1805, and by a deed poll under the hand and seal of your petitioner's late mother

Mary Duke, dated the 11th day of June, 1806, your petitioner became entitled to the sum of £360 with interest or the same, from the 3d day of April last, the time of the death of your petitioner's late mother Mary Duke, charged on the estate and premises in the settlement mentioned, and belonging to the defendant John Duke, your petitioner's eldest brother; and further certify that by indenture dated the 16th of December, 1806, John Duke, your petitioner's late father, did covenant by deed or will to secure within 12 months after his decease, £4,200 for the benefit of your petitioner and his other younger children, to be paid at such times and in such proportions, and under such restrictions as he by deed or will should direct or appoint, and in default of appointment to be equally divided, share and share alike, the shares of the son or sons to be paid at 21, with a proviso that in case of the deaths of all or any of such children under age and unmarried, then the portions or sums thereby secured for him or her so dying, should not be raised, but sink into his the said John Duke's estate, for the benefit of the defendant John Duke, his eldest son; and the said John Duke entered into a bond to William Pretty in the penal sum of £8,400 for performance of the covenants and the said John Duke by his will dated the 18th March, 1807, declared his will to be that his debts and funeral expences should be first duly paid, and his settlement of the 16th of December, 1806, fulfilled and performed, and after giving some small specific and pecuniary legacies, gave and bequeathed unto the late defendants William Pretty and Richard Taunton, all his personal and real estate, in trust, for the defendant John Duke, and appointed John Duke and Richard Taunton executors, and empowered them to sell or mortgage any of his estates, that he had not otherwise settled to raise money for his younger children; that the said testator died without making any appointment of the £4,200, whereby the same is to be

equally divided, so that each child's part amounts to £840, but the principal sum of £4,200 being by the bond and covenant of the said John Duke, the same is a debt by specialty, and to be paid out of the testator's real and personal assets, and although it is apprehended the same will be sufficient to pay all his debts, yet the accounts thereof, not being yet settled and adjusted, and part of the testator's assets being still unreceived, and the real assets not being yet sold, it does not with certainty appear whether the testator's real and personal assets will be sufficient to satisfy all his debts.

That he found there is now standing in the name of the accomptant-general the several capital sums of £550 in bank stock, 633*l.* 18*s.* 4*d.* South Sea annuities subscribed, arising by and out of the testator's personal estate.

And by his report stated, that as your petitioner by the death of the late defendant Mary Duke, his mother, was immediately entitled to the principal sum of £360, his fifth part of the before mentioned principal sum of £1800 by the settlement of the 8th of December, 1805, charged upon the lands and premises therein comprized, to which the defendant John Duke, as eldest son of the marriage, is by the said settlement become entitled as tenant in tail male.

That the defendant John Duke had before him declared, it would be very inconvenient for him immediately to raise the same, he was desirous that the several sums of £200 and 48*l.* 2*s.* 10*d.* should be raised by sale of a sufficient part of any of the stocks standing in the name of the accomptant-general, part of the testator's personal estate, and to facilitate the immediate payment of the said £200 and 48*l.* 2*s.* 10*d.* for the purposes aforesaid, he the defendant John Duke was willing to consent to the raising the same by such sale, and to give up and release all benefit and advantage in respect of the aforesaid several sums of

200*l.* and 48*l.* 2*s.* 10*d.* that might arise or accrue unto him by the death of your petitioner George Duke under the age of 21 years. That there is now in the bank 46*l.* 18*s.* 8*d.* in cash, dividends arising by the said stocks.

Your petitioner therefore humbly prays your honour that so much of the South Sea annuities standing in the name of the accomptant-general to the credit of this cause, by the title Duke against Pretty, may be sold, as will, together with the sum of 46*l.* 18*s.* 8*d.* cash in the bank, be sufficient to raise the sum of 200*l.* for placing out your petitioner apprentice as aforesaid, and 48*l.* 2*s.* 10*d.* for furnishing your petitioner with clothes and other necessaries, and that the said sums of 200*l.* and 48*l.* 2*s.* 10*d.* may be paid to Mr. Thomas Mortimer, your petitioner's clerk in court, for the purposes aforesaid, and that the accountant-general may draw on the bank for the same.

And your petitioner shall, &c.

A Petition stating a Decretal Order upon further Directions, several Reports, the Examination of a Feme Covert, as to the Disposal of Property in her Right, and other Matters very special.

In Chancery.

Between Charles Morgan, Administrator of Margaret Brodrick, widow, deceased, Hugh Montgomery, and Christian his wife, Matthew Conyers, and Bridget his wife,
Plaintiffs;

and

John Polehampton, Thomas Cockaine, James Matthews, and Honora his wife, Edmund Matthews, Thomas Kelly, and John Simpson, - Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiffs Charles Morgan, and Matthew Conyers and Bridget his wife, .

Sheweth,

That by the decree made on the hearing of this cause on the 15th day of July, 1809, it was (amongst other things) ordered that the clear residue of the personal estate of the testator Jeffery Morgan therein named, should be divided into moieties; and the court did declare that one moiety belonged in fourths to the petitioners Charles Morgan, Margaret Brodrick, and the plaintiffs Hugh Montgomery and Christian his wife, and your petitioners Matthew Conyers and Bridget his wife, in right of their respective wives; and it was ordered that one-fourth part thereof should be paid to the

plaintiff Charles Morgan, and one other fourth part to the plaintiff Margaret Brodrick; and it was ordered that the two other fourth parts thereof should be paid into the bank with the privity of the accountant general of this court, on the credit of this cause, and to the respective accounts of the said Christian Montgomery and Bridget Conyer's, subject to the following inquiries, and the further order of the court. And it was referred to sir John Simeon, bart. one of the masters of this court, to inquire whether the said plaintiffs Hugh Montgomery and Matthew Conyers, had made any and what settlement on or provision for their said wives, and the issue of their respective marriages, and in case they had not made any settlement, or such as the said master should not approve, it was ordered that the said plaintiffs Hugh Montgomery, and Matthew Conyers, should be respectively at liberty to lay proposals before the said master for a settlement on, or provision for their said wives, and the issue of their said marriages; and in either case the master was to state the same, with his opinion thereon, to the court; and as to the other moiety of the residue of the said testator's personal estate belonging to the defendant Honora Matthews, it was ordered that the same should be paid into the bank with the privity of the said accountant general of this court, on the credit of this cause, and placed to the account of the said Honora Matthews, subject to the further order of the court, and it was ordered that all parties should be paid their costs of this suit to the time of the hearing, to be taxed by the said master out of the said testator's estate; and the court reserved the consideration of subsequent costs, and of all further directions, until after the master should have made his report, and any of the parties were to be at liberty to apply to the court as they should be advised.

That the said master by his report bearing date the

18th day of May, 1810, (which was afterwards absolutely confirmed), certified among other things, that with respect to the inquiry as to your petitioner, Matthew Conyers's settlement, he found that by indentures of lease and release bearing date respectively the 31st of May and the 1st of June, 1808, the release being made between your petitioners Matthew Conyers and Bridget his wife, by the description of Matthew Conyers, of Uttoxeter, in the county of Stafford, esq. and Bridget Conyers, otherwise Brodrick, his wife, of the one part, and John Graham of the city of Gloucester, esq. and the Reverend Christopher Crofts of the other part; it was witnessed by the said indenture of release, that in consideration of a marriage then some time since had between your petitioners, and also in consideration of such advancement and benefit in money, lands, houses, and otherwise as would accrue or arise to your petitioner Matthew Conyers by the said marriage, and for settling a competent jointure or maintenance for your petitioner Bridget Conyers during her life, and also for the settling and conveying the messuages, tenements, and hereditaments, belonging to your petitioner Matthew Conyers, thereafter particularly mentioned, being freehold, and for assigning such other securities to such uses as thereafter declared, and in consideration of five shillings, by the said John Graham and Christopher Crofts to your petitioner Matthew Conyers paid, and for divers other good causes and considerations, your petitioner Matthew Conyers did grant, bargain, sell, release, and confirm unto the said John Graham and Christopher Crofts, and to their heirs, the messuages or tenements situate, lying or being near the market place, in the town of Gloucester aforesaid, and then in the possession of Mr. Walter Clarke, of the city of Gloucester aforesaid, merchant, as tenant to your petitioner Matthew Conyers; and all the estate, right, interest,

possession, claim, and demand of your petitioner Matthew Conyers; To hold unto the said John Graham and Christopher Crofts, and their heirs, to and for the several uses thereinafter declared, then as concerning the said premises, with their appurtenances, to the use of your said petitioner Matthew Conyers, for his life, remainder to the use of the said John Graham and Christopher Crofts, their heirs and assigns, during the life of your said petitioner Matthew Conyers, in trust, for preserving the contingent uses and estates therein limited, with remainder, upon trust that they the said John Graham and Christopher Crofts, should, out of the rents and profits of the said premises, raise and pay unto your petitioner Bridget Conyers, yearly, during her life, the sum of £220 part of her jointure, which was to be made up and completed by other securities and provisions thereinafter mentioned; and upon further trust, that the overplus of the said rents and profits, over and above what should be paid to your petitioner Bridget Conyers, in part of her jointure as aforesaid, should be paid to the persons who should for the time being, be next in remainder or reversion of the said premises; and after the decease of your said petitioner Bridget Conyers, to the first son of your petitioners, lawfully begotten, in tail male, remainder to the second, and all other the son and sons of your petitioners Matthew Conyers and Bridget his wife, lawfully to be begotten severally and successively, in tail male, remainder to the use of your petitioner Matthew Conyers, his heirs and assigns for ever, And reciting that your petitioner Matthew Conyers, for securing the further maintenance and jointure unto your petitioner Bridget Conyers, had deposited in the hands of the said John Graham and Christopher Crofts, the sum of £500 upon interest after the rate of £5 per cent. per annum. It was declared and agreed that the said sum of £500 principal money was so placed or deposited, upon trust, that they the said

John Graham and Christopher Crofts should from and after the decease of your said petitioner Matthew Conyers pay unto your petitioner Bridget Conyers, the sum of £25, being the interest thereof yearly during her life; and upon further trust that they, the said John Graham and Christopher Crofts, should from and after the decease of your petitioner Bridget Conyers pay the said sum of £500 to Charles John Conyers, the eldest son of your petitioner Matthew Conyers and Bridget his wife. And it was declared and agreed, by and between your petitioners that the said sum of £220 and £25, making together £245, secured and settled by your petitioner Matthew Conyers in manner aforesaid, was in full for the jointure of your petitioner Bridget Conyers, and in lieu and bar of her dower and thirds at common law.

And the said master further certified that he found that the premises comprised in the said settlement, were then let by your petitioner Matthew Conyers, upon a lease of which there were about 24 years unexpired, at the yearly rent of 45*l.* 15*s.* And the said master (after stating the ages of your petitioner and of their issue, which consisted of two sons and five daughters), further certified that he was of opinion that the said settlement was a sufficient provision for your petitioner Bridget Conyers, and her eldest son, the said Charles John Conyers, according and in proportion to the benefit which your petitioner Bridget Conyers was entitled to under the said testator's will, but that he was of opinion that the younger children of your petitioners Matthew Conyers and Bridget his wife, were not sufficiently provided for by the said settlement, but that your petitioner Matthew Conyers had waived laying before him any proposal for a further or other settlement on or provision for his said wife or issue.

That by an order made on the hearing of this cause for further directions, on the 1st day of July, 1814, it was (amongst other things, after providing for the payment of

the costs of this suit,) ordered that the said master should ascertain the clear residue of the estate of the testator Jeffery Morgan, and also the proportions in which the parties were entitled thereto, having regard to what they had respectively received on account of such residue. And it was ordered, that what the said master should ascertain as the share of your petitioner Charles Morgan in his own right, and also as administrator with the will annexed of the late plaintiff Margaret Brodrick should be paid to him : and that what the said master should ascertain as the share of your petitioner Bridget Conyers, should be carried over to the account of your petitioners Matthew Conyers and Bridget his wife, subject to the inquiry after directed and the further order of the court; and it was ordered that your petitioner Bridget Conyers should attend Richard Gough, of the city of Gloucester, esquire, Thomas Kirby of the same place, esquire, Charles Hall of the same place, esquire, Walter Edmonds of the same place, merchant, John Birch of the same place, gentleman, John Topham of the same place, gentleman, and Edward Baynes, of the same place, gentleman, or any two of them, who were to examine her solely and apart from her husband, to whom and for what purpose she was consenting and desirous that what the master should ascertain to be her share of the clear residue of the personal estate of the said testator Jeffery Morgan should be paid and applied, and to take her examination in writing, which was to be signed and certified by them, and the signing of such examination and certificate were to be verified by affidavit.

That the said Richard Gough, and Charles Hall, (two of the persons named in the said last mentioned order,) by their certificate(a) bearing date the 7th day of August, 1811, signed by them, and also by your petitioner Bridget Conyers, and verified by the affidavit of Thomas Griffiths and Leonard Hampton (the subscribing witnesses,)

(a) See ante, Vol. II. p. 83.

certified that your petitioner Bridget Conyers, the wife of the petitioner Matthew Conyers, did on that day attend them, and that they did examine her solely and apart from her said husband to whom and for what purposes she was consenting and desirous, that what the said master should ascertain to be her share of the clear residue of the personal estate of the said testator Jeffery Morgan, should be paid and applied; and that your petitioner Bridget Conyers did consent and desire that what the said master should ascertain to be her share of the clear residue of the said testator's personal estate, should be paid to your petitioner Matthew Conyers, her husband. And your petitioner, the said Bridget Conyers, did thereby declare, that she did freely and voluntarily consent and desire, that what the said master should ascertain to be her share of the said testator's personal estate should be paid to your petitioner Matthew Conyers, her husband.

That in pursuance of the said order, the 1st day of July, 1804, the said master made his report, (which hath been absolutely confirmed,) bearing date the 11th day of December, 1804, and thereby among other things certified, that he found the sum of 117*l.* 1*s.* 8*d.* to be that part of the clear residue of the said testator's personal estate which was in cash. And he found, that other part of the said testator's personal estate, consisted of £3600 Bank 3*l.* per cent. consol. annuities, then standing in the said accountant general's name, in trust in this cause.

And the said master further certified, that he had in the second schedule to his said report set forth the particulars of the several proportions in which the parties were entitled to such residue, distinguishing therein what they had respectively received on account thereof.

That by the second schedule to the said report, it appears, that the proportion of your petitioner Charles Morgan in his own right of the aforesaid sum of 117*l.* 1*s.* 8*d.*,

amounted to 22*l.* 14*s.* 10*d.*; and the proportion of your petitioner Charles Morgan, as administrator of the late plaintiff Margaret Brodrick of the said sum of 117*l.* 1*s.* 8*d.* amounted to 10*l.* 4*s.* 8*d.* And that your petitioner Charles Morgan's share in his own right of the said 3600*l.* bank annuities was 450*l.* like annuities. And that his share of such bank annuities as administrator of the said late plaintiff Margaret Brodrick was also 550*l.* like annuities.

That by the said second schedule it also appears that the proportion of your petitioner Bridget Conyers, of the aforesaid sum of 117*l.* 1*s.* 8*d.* amounted to 22*l.* 14*s.* 10*d.* And that her share of the said 3600*l.* bank annuities was 450*l.* like annuities.

That by the said second schedule it likewise appears, that the proportion of the defendant Honora Matthews of the aforesaid sum of 117*l.* 1*s.* 8*d.* amounted to 6*l.* 7*s.* 4*d.*; and that her share of the said 3600*l.* bank annuities, was 1800*l.* like annuities. And by the same schedule it appears, that the share of the plaintiff Christian Montgomery of the said 3600*l.* bank annuities was 450*l.* like annuities.

That in pursuance of the aforesaid decree, order, and reports, the said accountant general hath carried over to the respective accounts of the said plaintiffs Hugh Montgomery, and Christian his wife, and the said defendant Honora Matthews, the several funds reported to belong to them as aforesaid. And the said accountant-general hath also carried over to the account of your petitioners Matthew Conyers, and Bridget his wife the aforesaid 450*l.* bank £3 per cent. consolidated annuities, and the said sum of 22*l.* 14*s.* 10*d.* and also the sum of 6*l.* 15*s.* being a like proportion of the interest which became due upon the said 3600*l.* bank annuities on the 5th day of January last. And the said 450*l.* bank annuities, and also the said two several sums of 22*l.* 14*s.* 10*d.* and 6*l.* 15*s.* making toge-

ther the sum of 29*l.* 9*s.* 10*d.* are standing in the name of the said accountant general, in trust in this cause, on the account of your petitioners, Matthew Conyers and Bridget his wife.

That there are standing in the name of the said accountant general in trust in this cause, 900*l.* bank 3*l.* per cent. consolidated annuities, and 46*l.* 9*s.* 6*d.* cash (part of 127*l.* 19*s.* 8*d.* cash) belonging to your petitioner Charles Morgan in his own right and as administrator as aforesaid, being the amount of the proportion reported due to him, as before stated, with the interest which accrued due on such bank annuities on the fifth day of January last, 1795.

Your petitioners therefore humbly pray your honour that the said certificate of the said Richard Gough and Charles Hall, and the said declaration and examination of your petitioner Bridget Conyers may be confirmed. And that the said 450*l.* bank 3*l.* per cent. consolidated annuities, together with all future dividends that may become due thereon previous to the transfer thereof, and the said sum of 29*l.* 9*s.* 10*d.* cash, may be respectively transferred and paid to your petitioner, Matthew Conyers; and that the said 900*l.* bank 3*l.* per cent. consolidated annuities, together with all future dividends, that may become due thereon previous to the transfer thereof, and the said sum of 46*l.* 9*s.* 6*d.* cash may be respectively transferred and paid to your petitioner Charles Morgan, or that your honour will be pleased to make such other order in the premises as to your honour shall seem meet.

And your petitioner will ever pray, &c.

Petition of the next of Kin, Parties to a Suit commenced after the Death of the Lunatic to establish his Will, to transfer and pay the Balance of his Estate to the Accountant General.

In Chancery.

Between Charles Marshall, and others, Plaintiffs ;
and

William Marshall, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of David Marshall and George Marshall, two of the defendants above-named.

Sheweth,

That John Marshall, late of Hitchin in the county of Hertford, esq. deceased, being in his life-time and at the time of his death, seized of a considerable real and personal estate, and being at the time of making and executing his will of sound mind, memory, and understanding, duly made and published his will and testament in writing, bearing date the 6th day of January, 1800, which was executed as by law is required for the devising and passing real estates.

That the said John Marshall, deceased, having several years afterwards become disordered in his mind, a commission in the nature of a writ *de lunatico inquirendo* some time in or about the year 1807 was issued under the great seal of Great Britain, and he was by inquisition duly taken thereon the 20th day of February in the said year 1807, found to be a lunatic. And in pursuance of your lordship's order made in this matter a grant of the custody of the said John Marshall passed the great seal on the 18th day

of May following to William Marshall, one of the defendants in this cause, as committee of the estate of the said John Marshall the lunatic.

That the said Wm. Marshall as committee as aforesaid, from the said 18th day of May, 1807, until the 28th day of April, 1816, the day of the death of the said John Marshall, the lunatic, acted as such committee, and duly and regularly passed his account before the master to whom the matter of the said lunacy was referred, and did during the time he acted as committee, as aforesaid, transfer the sum of 12,396*l.* 4*s.* 8*d.* bank 3*l.* per cent. consolidated annuities into the name of the accountant general of this court to the credit of the matter of the said lunacy. And the said William Marshall did also pay the sum of 520*l.* 2*s.* 6*d.* in cash to the said accountant general to the credit of the said matter, being the balance of an account which appeared to be remaining in his hands upon taking and passing his final account as committee, and upon payment whereof to the accountant general, the recognizance entered into by the said William Marshall hath by your lordship's order been regularly discharged and vacated.

That there is now standing in the name of the said accountant general, in trust in the said matter, the said capital sum of 12,396*l.* 4*s.* 8*d.* bank three per cent. consolidated annuities, and in cash the said sum of 520*l.* 2*s.* 6*d.*

That the plaintiffs filed their bill in this honourable court in Trinity term last, praying that the said will of the said John Marshall the lunatic may be established, and the trusts thereof performed and carried into execution, and for the directions of the court in other respects, and they are now proceeding in the said suit, to which your petitioners have appeared.

That your petitioners, and also the other defendant William Marshall, the heir at law of the said John Marshall, the lunatic, and Mary Groome, the wife of George Groome, esq. and Sophia Marshall, the other defendants

in this cause, are the brothers and sisters of the said John Marshall, deceased, and devisees and legatees named in the said will of the said John Marshall.

That your petitioners David Marshall and George Marshall are the trustees named and appointed in and by the said will, and are likewise administrators with the will annexed of the said John Marshall, the lunatic, the surviving, executor and executrix in the said will named, having renounced the probate thereof.

Your petitioners, therefore, humbly pray, that the said accountant general may be directed to transfer the said capital sum of 12,396*l.* 4*s.* 8*d.* bank 3*l.* per cent. consol. annuities in trust in the matter of the said lunacy, to the credit of this cause; and that he may be also directed to lay out and invest the sum of 520*l.* 2*s.* 6*d.* cash, remaining in his hands as aforesaid, or so much thereof as this court shall think proper in the purchase of like 3*l.* per cent. consol. bank annuities, and that the same may be added to the capital aforesaid, to the credit of this cause. And that the dividends of all the said capital sums as they shall become due and be received, may from time to time be laid out in the said stock in accumulation of the aforesaid capital sum or sums to the credit of this cause.

And your petitioners shall ever pray, &c.

The Form of a Petition to rectify Minutes of a Decretal Order. (a)

In Chancery.

Between John Pratt, Plaintiff;
and
James Pratt and John Wade, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the defendant, James Pratt,
Sheweth,

That in or about Hilary term, 1801, the plaintiff filed his bill in this court, thereby setting forth a settlement made previous to the marriage of your petitioners and the plaintiff's father and mother, of the 18th of May, 1784, reciting securities taken in the name of your petitioners' mother, Elizabeth Yeates, in 5000*l*. she the said Elizabeth Yeates, with the consent of her intended husband, assigned all such securities to trustees therein named, in trust for herself till marriage, and after her marriage, to lay out the said 5000*l*. in the purchase of lands or tenements in fee, to be settled to the use of your petitioner's father for life, with remainder to trustees to preserve contingent remainders, with remainder to Elizabeth, his intended wife, for life, remainder to the use of such child or children of the marriage for such estates, and in such parts, shares, and proportions, as your petitioners'

(a) By the Orders of the Court of Chancery, application to rectify the minutes, should be within a week after the order pronounced on the hearing. Ord. Can. Bea. Ed. 335. where it is said that this order is not attended to and the cases there referred to.

father should appoint. And in default of appointment, to the use of all and every the child and children of the said marriage, and the heirs of their respective bodies, lawfully issuing, as tenants in common: and in default of issue, to such uses as your petitioner's mother should appoint: and in default of appointment, to your petitioners' father, his heirs and assigns, for ever.

That your petitioners' father and mother were both dead, and that your petitioner and the plaintiff were the only surviving children of the marriage, and entitled to the said £5000, or to have the same laid out in land, and settled in such manner as they might be tenants in tail, in common, and be enabled, by fine or recovery, to bar the entail, and dispose of such lands.

That all the trustees in the said settlement were dead, and that your petitioner had received part of the said £5000 trust monies, and had refused to pay the plaintiff her share, or to consent that the plaintiff should pay so much of the outstanding securities as would be equal to what your petitioner had received, though often applied to for that purpose; and insisted that your petitioner ought to permit the plaintiff to receive to his own use so much of the outstanding securities as would be equal to what your petitioner had received: therefore, the said bill prayed that your petitioner might account for the monies received, and might pay the plaintiff his moiety, or that the plaintiff might be empowered to receive so much of the outstanding securities as will be equal to what your petitioner had received; and in case your petitioner had received more than his share, your petitioner might pay the plaintiff the difference, or that the trusts of the settlement may be carried into execution.

That your petitioner, by his answer, admitted that the plaintiff is entitled to one moiety of the £5000 as stated in the bill; and that your petitioner had received 1388*l.* 14*s.* 3*d.* part of the trust-monies and interest, as set forth in

the schedule ; and did not insist that the same should be laid out, but was willing that the money should be equally divided and shared between the plaintiff and your petitioner.

And your petitioner offered to account with the plaintiff to pay him a moiety of the trust monies received by your petitioner; after a deduction or allowance of the plaintiff's share of all monies your petitioner had paid to or for the plaintiff, or as the plaintiff owed, or stood indebted to your petitioner, and which your petitioner computed to be 768*l.* 0*s.* 4½*d.* on a balance as particularly set forth in the schedule.

That this cause came on to be heard before your honour on the 18th day of February last, and by the minutes taken by the register, it is referred to one of the masters of this court, to take an account of the principal sum of £5000 trust money, mentioned in the deed of the 18th of May, 1784, and of the interest thereof received by your petitioner; and that your petitioner, by his answer, having consented to the division of the trust money, that what should be found due should be divided into moieties; and that one moiety should be retained by your petitioner, and the other moiety paid to the plaintiff; and by consent, that the defendant Wade, the executor of the surviving trustees, do pay the sums of £126 and £27, part of the trust-money, after deducting his costs of this suit to the plaintiff and your petitioner in equal moieties; and that the master do appoint a proper person to collect such part of the £5000 trust money as is standing out; and that the monies which shall be collected be divided into moieties, and one moiety be paid to the plaintiff, and the other moiety to your petitioner, with the usual directions for taking of the account; and the consideration of costs as between the plaintiff and your petitioner, was reserved until after the master should have made his report.

That your petitioner apprehends the register hath mistaken your honour's directions upon the hearing ; for your petitioners are advised in consequence of your petitioners' consent, that the £5000 be equally divided without being invested in land, is, that the same be in all respects considered as money ; and that your petitioner annexed a condition to his consent by his answer, namely, to set off the balance due from the plaintiff to your petitioner, on account of the monies paid to the plaintiff ; or for his use, or so much as upon an account to be directed, the court shall be of opinion ought to be allowed your petitioner, and touching which account, both the plaintiff and your petitioner have entered into very full proof, or that the direction for payment of what shall appear to have been received by your petitioner, and of the £126 and £27 by the defendant Wade, and that what shall be collected by the person to be appointed to collect the outstanding trust-money, be omitted in the said decree ; and the consideration thereof reserved until after the master shall have made his report.

Your petitioner therefore humbly prays your honour, that the minutes of the said decree may be rectified, by inserting a direction for taking the account between your petitioner and the plaintiff, and directing the balance that shall appear on such account to be due to your petitioner, to be retained or paid out of the plaintiff's moiety of the trust-monies received by your petitioner, or by the person to be appointed to receive the outstanding trust-money, or that the several directions for payment of the trust-money may be omitted ; and all further directions may be reserved until after the master shall have made his report.

And your petitioner will ever pray, &c.*

Petition to rectify Minutes as to an Issue at Law.

In Chancery.

Between Thomas Harris and others,

and

Plaintiffs;

**Frances Dorsett, Richard Bayley, Nathaniel Webb, and David Webb,
Defendants.**

To the right honourable the Lord High Chancellor of
Great Britain.

The petition of the plaintiffs,

Sheweth,

That your petitioners in Hilary term, 1808, filed their bill in this court against the said defendants, thereby setting forth (amongst other things) that your petitioners, together with the late defendant Nathaniel Webb, being possessed by virtue of several leases and subsequent assignments thereof, of certain iron works and premises therein particularly mentioned, in Cardiff, in Glamorganshire, for the several terms of years therein mentioned, and the said defendants Francis Dorsett and Richard Bayley, and the said late defendant Nathaniel Webb, having agreed to be concerned together as partners in such iron works, your petitioners and the said defendant Webb, did on the 19th of March, 1808, enter into a written agreement with the said defendant Dorsett, on behalf of himself and company, by whom your petitioners understood were meant the said other defendant, Richard Bayley, and the said late defendant, Nathaniel Webb, to let to the said defendants the said iron works and premises for the remainder of the several terms, which your petitioners and the said Nathaniel Webb then

had therein, under certain terms and conditions in the said written agreement specified and contained.

That the said defendants had done several acts of partnership, but yet no actual lease of the said premises had been so made to them, and that the said defendants refused to take a lease of the same, the defendants, Richard Bailey and Nathaniel Webb pretending that they had never been or agreed to be concerned as partners in the said iron works and premises with the said defendant Dorsett, and therefore your petitioners by their said bill prayed that the said defendants might answer the premises, and be compelled to perform the said agreements, to take such lease, and pay such rent, and give such security as in the said bill particularly mentioned.

That all the said defendants put in their several answers to the said bill, and thereby the said defendants Richard Bailey and Nathaniel Webb, deceased, set up such defence as hereinbefore mentioned.

That the said defendant Nathaniel Webb, afterwards dying intestate, leaving his son Richard Webb, an infant, the abovenamed defendant David Webb and Nathaniel Webb took out administration to him during the infancy of the said Richard, and thereupon your petitioners exhibited their bill of revivor against the said Nathaniel Webb and David Webb, as the personal representatives of the said Nathaniel Webb, deceased, and the said cause was by order duly revived against them.

That the said cause being at issue, divers witnesses were examined, and publication being passed, the said cause came on to be heard before your lordship, on the 25th of July last, when your lordship was pleased to direct that the parties should proceed to a trial at law at the next Lent assizes, to be holden for the county of Monmouth on the following issue, "*Whether the defendant Richard Bailey, was a partner with the defendant Nathaniel Webb, and Francis Dorsett, on the 19th of*

" *March, 1808;*" and to the end the trial might be had, it was further ordered that the plaintiffs here should be plaintiffs at law, and the defendant Richard Bailey defendant at law, and that he should forthwith name an attorney, accept a declaration, appear, and plead to the issue, and that the master should settle the issue, in case the parties should differ about the same, and your lordship did reserve the consideration of costs and of all further directions until after such trial, and any of the parties were to be at liberty to apply to the court as there should be occasion.(a)

That your petitioner humbly conceives it is proper that the said issue should be tried by a jury of persons conversant in trade, and mercantile transactions, and thereby capable of judging what are or are not acts of partnership, and therefore your petitioners are apprehensive that in case the said issue should be tried by a jury of the county of Monmouth, they will be persons residing wholly in the county, out of and unconnected and unacquainted with trade and partnerships, and the nature of partnerships, and in all respects unfit to try the aforesaid issue.

That the witnesses which your petitioners mean to produce at the trial of the said issue, and as your petitioners believe those also of the defendant Richard Bailey, reside at a great distance from the town of Monmouth, and the subject matter of the above cause and of the aforesaid issue at law directed to be tried as aforesaid, did not arise in the county of Monmouth.

That your petitioners, for the reasons aforesaid, humbly conceive it would be more proper and more to the satisfaction of all parties that the said issue should be tried in the court of King's Bench at the sittings after this Hilary term in London, and inasmuch as the said decree is not yet drawn up.

Your petitioner therefore humbly prays your lord-

(a) See Ante, title " Issue."

ship that the minutes of the said decree may be varied, and that the parties shall be directed to proceed to trial at law at the sittings after Hilary term next, in the court of King's Bench in London on the issue in the said minutes mentioned, or that your lordship will be pleased to make such other order therein as to your lordship shall seem meet.

And your petitioner will ever pray, &c.(a)

Form of a Petition of Appeal from a Decree made by the Right Honourable the Master of the Rolls to the Lord Chancellor.(b)

In Chancery.

Between John Delabere, gent. Plaintiff;
and

John Bridges, Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the defendant John Bridges.

Sheweth,

That John Bridges, your petitioner's late father deceased, being seised in fee of a freehold portion of tithes, with the appurtenances arising upon a copyhold messuage in Holcombe, in the parish of Painswick, in the county of Gloucester, and the arable lands, meadows, leasows, and

(a) It would be proper to support this petition by an affidavit see title Affidavit, ante, p. 48.

(b) A petition of appeal from a decree made by the master of the rolls, must be presented within one month after the decree pronounced. Ord. Can. Bea. Ed. 316, 458, and 107. deposited with the register.

pasture grounds thereto belonging, and upon a meadow called Great Nash, in the tything of Spoonbed, in the said parish; and also seised to him and his heirs, according to the custom of Painswick manor, of a copyhold messuage, and half a yard land, called Collins, held of the said manor at the yearly rent of 12s. 2d. and of three quarters of an acre of arable land on Wickeridge Hill, in Stround End tything in the same parish, at the yearly rent of one penny, about the 6th day of May, 1756, borrowed £140 of Thomas Brewer and John Brewer, both since deceased, and for securing the repayment of the said £140, and interest at £4 per cent. by indentures of lease and release, dated respectively the 5th and 6th days of May, 1756, the said John Bridges conveyed to the said Thomas Brewer and John Brewer, and their heirs, the said portion of tithes, with the appurtenances, subject to redemption as therein mentioned; and by the said release covenanted that he and his heirs would, whenever the said John and Thomas Brewer should require, surrender the said copyhold premises, and also procure them to be admitted tenants thereto according to the custom of the said manor. And it was agreed, that if the said John Bridges should pay the said £140 and interest, at £4 per cent. on the 6th day of November, then next, the said Thomas Brewer and John Brewer should, at the said John Bridges's request and charges, surrender and release the said tithes and premises to the said John Bridges and his heirs, free from incumbrances by them.

That afterwards and before any surrender was made of the said copyhold premises, or payment of the said £140 and interest, your petitioner's said father, John Bridges, died intestate, leaving Ann Bridges his widow, (who afterwards married with William Cooke) and your petitioner, his only son and heir, by a former wife, then an infant, whereupon the said mortgaged premises, or the equity of redemption thereof descended upon your pe-

tioner, as heir at law of his said late father, subject to the said mortgage and to the dower of the said Ann Bridges (afterwards Cooke) in such parts of the said premises as are freehold, and to her free bench in such parts thereof as are copyhold.

That the said Thomas and John Brewer, in Michaelmas term, 1758, and during the minority of your petitioner, filed their bill against the said William Cooke and his wife, who had administered to the said intestate, John Bridges, and against your petitioner, to compel the said Cooke and his wife to admit assets of the said intestate, John Bridges, sufficient to satisfy the principal, interest, and costs, due to them on their said mortgage, or to account for his personal estate, and that they might be paid thereout, or otherwise, what should appear due to them, or that the defendants might surrender the copyhold premises to them, and might be foreclosed, and they be let into possession thereof, and have all deeds, copies of court-roll, &c. relating thereto, delivered to them.

That the defendants to the said bill put in their answers thereto, and the said cause being afterwards at issue, witnesses were examined therein, and the same came on to be heard before his then honour, the Master of the Rolls, on the 11th day of May, 1762, when his honour ordered an account to be taken of what was due to the said Thomas and John Brewer, for principal, interest, and costs, on their mortgage, and to tax them their costs, and also to tax defendants Cooke and his wife their costs, and that the said Thomas and John Brewer should pay the same, and that such costs should be added to what should be found due to the plaintiffs, and paid in like manner; and that upon your petitioners paying to them what the master should certify to be due to them, for principal, interest, and costs, together with the costs they should pay the defendants, Cooke and wife, within six months after the master should have made his report. It was or-

dered that the said Thomas and John Brewer should reconvey the freehold estate, comprized in their mortgage, and release the covenant therein for the surrender of the copyhold estate, free from incumbrances, done by them, and deliver on oath all deeds, &c. in their custody, relating to the mortgaged premises, to your petitioner, or as he should appoint; but in default thereof, It was ordered, that your petitioner should, from thenceforth, stand absolutely foreclosed of all equity of redemption, of the said freehold estate, subject to the dower of the said Ann Cooke therein. And in that event it was ordered, that your petitioner, when he should attain the age of twenty-one years, should surrender the said copyhold estate to the said Thomas and John Brewer, subject to the said Ann Cooke's free bench: and in the mean time the said Thomas Brewer and John Brewer, or any person claiming under them, should enjoy the said copyhold estate, subject as aforesaid. *And the said decree was to be binding on your petitioner, then an infant, unless he, on being served with a subpoena to shew cause against the same, should within six months after he should attain 21 years of age shew cause to the contrary.*

That the master made his report on the 9th of December, 1762, and did thereby certify to be due to the said Thomas and John Brewer, with 47*l.* 10*s.* 11*d.* the costs of the defendants, Cooke and wife, the sum of 28*l.* 2*s.* 2½*d.* which he appointed your petitioner to pay to the said Thomas Brewer and John Brewer, on the 9th of June then next, which report was absolutely confirmed.

That the mortgage-money not being paid pursuant to such report, by an order, dated 22d of June, 1763, your petitioner was ordered to stand foreclosed of the said mortgaged premises.

That the then plaintiff John Brewer, afterwards died intestate, and without issue, and administration of his personal estate was granted to Thomas Brewer, son of

the other then plaintiff Thomas Brewer, who was eldest brother and heir-at-law of the said John Brewer.

That the plaintiff John Delabere, about March, 1764, agreed with the said Thomas Brewer, and Thomas Brewer, his son, the administrator of the said John Brewer, for the purchase of their estate and interest in the mortgaged premises (subject as aforesaid), for £280, and in pursuance thereof, by indentures of lease and release, dated respectively the 5th and 6th of March, 1764, the said Thomas Brewer, the elder, in consideration of £280 paid to him by the plaintiff, did, with the consent of the said Thomas Brewer, the younger, convey to and to the use of the plaintiff, his heirs and assigns, for ever, the aforesaid portion of tithes, being freehold, and subject to the dower of the said Ann Cooke, and thereby covenanted to surrender to the plaintiff, and his heirs, the said copyhold premises.

That the said Ann Cooke died on the 1st of June, 1769, having in her life-time been admitted to the copyhold part of the said mortgaged premises, for her life, for her free bench, and having received one-third of the rents of the tithes, being freehold, for her dower.

That the said John Brewer and Thomas Brewer, and plaintiff John Delabere, since the assignment of the mortgage to him, were in the receipt of two-thirds of the freehold tithes, during the said Ann Cooke's life, and since her death, the said plaintiff hath been in possession, and received the rents of the freehold, and also received the rents of the copyhold estates.

That the plaintiff filed his bill in Trinity term, 1770, against your petitioners, and others, that he might have the benefit of the said former decree, as standing in the place of the plaintiffs in that cause, and that your petitioner may surrender the said copyhold premises to the sole use of the plaintiff, and his heirs, according to the custom of the said manor, and to be quieted in the possession of the said freehold and copyhold premises.

To which bill your petitioner put in his answer, and thereby insisted, that the said foreclosure was subject to the proviso in the decree for your petitioners, shewing cause against the same, on being served with a subpœna for that purpose, when your petitioner should attain 21 years of age; and therefore, notwithstanding the said decree, report, and order, of the 22d of June, 1763, the said decree was not absolute against your petitioner, and that your petitioner's equity of redemption in the mortgaged premises was in no wise foreclosed, but remained open to redemption: neither the said John Brewer and Thomas Brewer, the original mortgagees, nor any claiming under them, nor the said plaintiff, John Delabere, having pursued the said decree, by serving your petitioner with a subpœna to shew cause against the same; but having deserted the same, by which means the foreclosure (the same being merely conditional) ordered by the said decree, was not perfected; for that the said decree was expressly ordered not to be binding on your petitioner, unless on being served with a subpœna to shew cause against the same, your petitioner should not, within six months after he should attain 21 years of age, shew to the court good cause to the contrary, and that your petitioner had never been served with any subpœna to shew cause against the same, though he attained 21 years of age some time in May, 1767; and also for that the said decree was in many respects erroneous, and particularly that there was no account thereby directed to be taken of the rents and profits of the freehold premises comprised in the said mortgage, received by the defendants Cooke and wife, and by the then plaintiffs Thomas and John Brewer, which ought to have been applied towards discharging the principal and interest due on the said mortgage; and that the plaintiffs in that cause, not having taken any decree against the defendants Cooke and his wife, the plaintiff's bill as to them, ought to have been dismissed with costs, and such costs paid by the plaintiffs in that suit, personally, and not added to the

money due to the plaintiffs, for principal, interest, and costs, on their mortgage, in prejudice to your petitioner's inheritance in the premises charged with the mortgage money and interest; and further, that the said decree did not express at whose expence your petitioner was to surrender the copyhold premises to the said Thomas and John Brewer, the plaintiffs in the former cause, your petitioner insisting that as heir-at-law to his late father, he was in no wise liable to answer the same.

Therefore your petitioner insisted, that the plaintiff John Delabere, could be considered in no other light than as standing in the place of the said Thomas Brewer and John Brewer, the original mortgagees, and the premises comprised in or affected by the said mortgage, could be considered only as a security for so much money and interest as should appear *bona fide* due thereon; and that therefore your petitioner should not be considered as foreclosed of his equity of redemption of the freehold premises comprised in the mortgage, or be compelled to surrender the copyhold premises affected thereby (in case the same were affected thereby) to the plaintiff; but that the same should be declared open to redemption, and your petitioner permitted to redeem the same, your petitioner being ready and offering so to do; your petitioner on the death of the said Ann Cooke, being as eldest son and heir-at-law of his late father, entitled to the copyhold premises, subject to such legal incumbrances as affect the same, and to the equity of redemption of the said freehold premises; the said copyhold premises never having been surrendered pursuant to the covenant contained in the mortgage-deed, nor any subpoena, to shew cause against the said decree, served on your petitioner.

And further insisted and entered into proof, that the 28th of 2s. 2^d. reported due to the said Thomas Brewer and John Brewer, for their principal, interest, and costs, together with the costs of the defendants Cooke and his wife, or the money paid by the plaintiff, for the purchase of the

mortgaged premises, was considerably less than the real value thereof, the copyhold being of the yearly value of £80 or thereabouts, and the portion of tithes, being freehold, of the yearly value of £4 or thereabouts, and worth together, to be sold, £1000, and that a purchaser could be procured to purchase the same at that price, and therefore hoped the court would not deprive him of his legal estate in the copyhold, and the equitable estate in the freehold premises: being ready to pay the plaintiff what, upon a fair account, should appear due to him on the said mortgage, the said plaintiff re-assigning to your petitioner his interest in the freehold, and releasing the covenant for surrendering the copyhold premises, and accounting for the rents and profits thereof, received by the said Thomas Brewer and John Brewer in their lifetimes, and by the said John Delabere since their deaths; or in case the court should be of opinion that your petitioner was foreclosed of the equity of redemption of the said portion of tithes, being freehold, and that the copyhold estate was any ways affected by the covenant in the mortgage deed, your petitioner hoped the same copyhold estate should be declared open to redemption, and your petitioner permitted to redeem the same, on payment by him to the plaintiff of what should be found due, ~~for~~ principal, interest, and costs, on the mortgage, after deducting thereout so much as the said freehold portion of tithes should appear to be really worth to be sold.

That the said cause being afterwards at issue, witnesses were examined therein, and the same came on to be heard before the right honourable the Master of the Rolls, on the 10th day of March, last, when his honour was pleased to declare, that the plaintiff was entitled to stand in the place of the said Thomas Brewer and John Brewer, the plaintiffs in the original cause, and to have the benefit of the decree made in that cause, dated the 11th day of May, 1762, and ordered that the said decree should be made absolute against your petitioner, and that your petitioner

should surrender the copyhold premises in question to the plaintiff and his heirs, or as he should direct, free from any right or equity of redemption thereof; such surrender, and the fine and fees to be paid for the same, to be at the plaintiff's expence, he consenting thereto.

That your petitioner apprehends he is aggrieved by the said decree.

12th May, 1772.

Upon the Petitioner or his clerk in court subscribing this petition, thereby consenting to pay such costs (if any) as the court shall think fit to award in respect of any proceedings had since the decree. And upon their depositing £10 with the register in a week. Let this cause be set down to be reheard before me next after the hearings and appeals already appointed. Hereof give notice forthwith.

Apsley, C.

Wherefore your petitioner does humbly appeal from the said decree to your lordship, and humbly prays, that before the same is signed, it may be reversed; and that your lordship will refer it back to the master, to compute subsequent interest and costs, and to take an account of the rents and profits received by the complainant, or those under whom he claims; and that in default of payment of what shall be found due for principal, interest, and costs on the said mortgage, after deducting thereout what the said plaintiff or any person or persons under whom he claims shall appear to have received by the rents and profits of the said mortgaged premises at such time as the master should appoint, that your petitioner might be foreclosed of his equity of redemption of the freehold pre-

mises, and surrender the copyhold premises, pursuant to the covenant of your petitioner's said father; but upon such payment that the complainant may assign and convey his interest

in the said premises to your petitioner and his heirs, or as he should direct; or that your lordship will vary the said decree in such manner as to your lordship shall seem meet.

And your petitioner shall ever pray, &c. (a)

We humbly conceive, that this cause is proper to be heard before your lordship, if your lordship shall so think fit.

A. C. Wedderburn.

John Madocks.

Petition to re-hear Exceptions.

In Chancery.

Between John Yeoman,
and

Plaintiff;

John Wilkinson,

Defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the defendant John Wilkinson,
Sheweth,

That, in the year 1728, your petitioner built a ship called the Buck, and in August, 1728, James Yeoman the elder deceased, mentioned in the pleadings in this cause, purchased of your petitioner for the sum of twenty-nine pounds and an halfpenny, one sixty-fourth part of the said ship, and her stock of one hundred and twenty-four pounds, and divers other persons became owners of small shares in the said ship.

That your petitioner, from the time the said ship was built, as chief owner of her, was, and till the loss of the said ship in the year 1747, continued to act as husband or manager of the said ship, and was master of the said ship.

That between the years 1728 and 1747, the said ship made several voyages, and particularly to Sweden for iron, and your petitioner during that time at various and dif-

(a) The decree of the Master of the Rolls, sir Thomas Sewell, was upon this appeal reversed, by decree, dated 15th of January, 1773.

ferent times settled the said ship's accounts with the said James Yeoman, and the several other part owners; and particularly in August, 1740, to which settlement in 1740 the said James Yeoman was a party, but to the settlements subsequent to August, 1740, the said James Yeoman was no party; the ship afterwards being unfortunate, and he refusing or declining to advance his proportion of the charges of her repairs, so that defendant considered him as no longer a part-owner.

That in such voyages as the said ship had taken to Sweden, your petitioner brought in her on his own account divers quantities of deal boards to make necessary stowage for the safety of the ship when loaded with iron, and according to the then known usage and custom of the trade your petitioner so brought the said stowage deals freight free, as his privilege, without making himself chargeable in the said ship's accounts with freight therefore to the owners, nor did any of the part-owners, or the said James Yeoman, who settled the said ship's accounts, require them so to do.

That in or about 1750, the said James Yeoman died, not having settled the said ship's accounts since August, 1740; but before his death he made his will, dated the 26th day of January, 1750, and appointed the plaintiff and James Yeoman the younger, executors thereof, which will the plaintiff soon afterwards proved, and the other executor James Yeoman the younger is dead.

That in Hilary term, 1756, the said plaintiff, as surviving executor of the said James Yeoman the elder, (who was a part-owner of the said ship as aforesaid,) filed his bill in this honourable court against your petitioner, for an account of the said ship's earnings, and which bill was afterwards twice amended. And the complainant by his amended bill charged, that (inter alia) your petitioner, during the time of his trading to Sweden with the said ship, purchased great quantities of deals or planks to a great advantage, and which with the freight thereof, and for his other dealings and trading in the said ship he ought

to account. And praying (amongst other things) a general account of the said ship's stock, and the increase and produce arising therefrom, and all the benefit from the freight and commerce carried on by the said ship from the time she was built till she was lost.*

That your petitioner put in three several answers to the said original and amended bills, and thereon admitted himself husband of the said ship, and insisted that the plaintiff was bound by the said several settlements of the said ship's accounts, and set out particularly how such accounts were settled, and by whom, and to evidence the same he referred to the books wherein such accounts are settled, which he left with his clerk in court. And your petitioner insisted that there was a usage and custom for all masters of ships trading to Sweden to carry deal boards, but not planks, and not for ballast, but to make necessary stowage for the safety of ships when loaded with iron and such like goods, freight free, for their own account as the master's privilege, and for which they are not accountable to the owners of the ship, and says, that accordingly he did take in deals necessary for stowage; and insists, that by virtue of such custom he is not accountable for any dealings or transactions in respect of what deals he so took ~~for the~~ stowage of the said ship when loaded with iron.

That issue being joined, witnesses examined, and publication passed, the said cause was heard before his honour the master of the rolls, the 10th day of December, 1764, when his honour was pleased to declare, that the said plaintiff, as representative of James Yeoman was bound by the accounts settled between his testator or his agent, and the other part-owners of the said ship Buck, in the pleadings mentioned, and the defendants down to the 30th day of August, 1740, and therefore his honour did not think fit to direct any account to that time; and did order and decree that the accounts which were settled between

the defendant and several of the part-owners of the said ship, subsequent thereto, be considered as binding on the plaintiff, as representative of the said James Yeoman, though he was not actually a party to the settling those subsequent accounts, but with liberty for either party to surcharge and falsify those accounts; and under this liberty it was further ordered, that it be referred to Mr. Harris, one of the masters of this court, to inquire whether during the time the said ship was employed, there was any such privilege or custom insisted on by the defendant's answers in respect to deals for stowage. And whether under such privilege or custom, and considering the transactions between the part-owners and the defendant in respect to deals for stowage, and whether under such privilege or custom, and considering the transactions between the part-owners and the defendant to the 30th day of August, 1740, the defendant subsequent to that time is entitled to such privilege or custom: and in case the said master should find he is, then he was to have the benefit thereof accordingly.

That pursuant to the said decree the master proceeded on the inquiry thereby directed, and on the 6th day of March, 1766, the said master made his report, whereby ~~he certified~~, that he had looked into the plaintiff's bill and defendant's answer, and the depositions of the several witnesses on both sides, and conceived, that during the time the said ship was employed, there was such privilege or custom as is insisted on by the defendant's answer in respect to deals for stowage, and that under such privilege or custom, and considering the transactions between the part-owners and the defendant to the 30th day of August, 1740, the defendant, subsequent to that time is entitled to the benefit of such privilege or custom. And as to the accounts in the said decree mentioned to have been settled by the defendant and the several part-owners of the said ship, subsequent to the said 30th day

of August, 1740, neither of the parties had offered before him to surcharge or falsify the same.

That the plaintiff took two exceptions to the master's said report.

First, For that the said master had, by his report certified, that during the time the ship in the pleadings mentioned, was employed, there was such privilege or custom, as is insisted on by the defendant's answer in respect to deals for stowage; Whereas he ought to have certified, that during the time the ship in the pleadings mentioned was employed, there was no such privilege or custom as is insisted on by the defendant's answer in respect to deals for stowage.

Second, For that the said master hath certified that under such privilege or custom as in the said report mentioned, and considering the transactions between the part-owners and the defendant, to the 30th day of August, 1740, the defendant subsequent to that time is entitled to the privilege or custom in the report and decree mentioned: Whereas the said master ought to have certified that notwithstanding he conceived there was such privilege or custom, yet that considering the transactions between the part-owners and the defendants, to the 30th of August, 1740, the defendant subsequent to that time is not entitled to such privilege or custom. That the said exceptions on the 5th day of July, 1766, came on to be argued before the late Lord Chancellor, when his lordship was pleased to order that the parties should proceed to a trial at law in the court of King's Bench in London, at such time as the lord chief justice of that court should appoint, on the following issue—" *Whether a master of a ship sent for iron to Sweden, may by the usage of trade bring therewith on his own account, deals for stowage without being liable to pay therefore freight to the owners;*" and the defendant here was to be plaintiff at law, and the plaintiff here defendant, who was

forthwith to name an attorney, to accept a declaration, appear and plead to issue. And it was referred to the said master to settle the said issue in case the parties differed about the same. And his lordship reserved the consideration of all further directions till after such trial should be had, and any of the parties were to be at liberty to apply to this court as there should be occasion. And it was further ordered that the matter of the said exceptions do stand over in the mean time.

By which last mentioned order of the 5th day of July, 1766, your petitioner conceives himself aggrieved throughout, and that the said exceptions ought to have been over-ruled, or a different issue (if any) directed.

Your petitioner therefore humbly prays your lordship to rehear the said exceptions, and to appoint some short day for that purpose.

And your petitioner will ever pray, &c.

We humbly conceive that the said exceptions to the said master's report in this cause are proper to be re-heard if your lordship shall think fit.

Wm. de Grey.

R. Perryn.

11th November, 1766.

Upon the petitioners depositing ten pounds with the register in a week, let these exceptions be set down to be re-argued before me next after the rehearings and appeals already appointed. Hereof give notice forthwith.

Camden, C.

Petition of Appeal from several Decretal Orders
made by the Master of the Rolls.

In Chancery.

Between John Spurrier,
and

Plaintiff;

Francis Mayoss and James Green, Defts.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of the defendants, Francis Mayoss
and James Green,

Sheweth,

That some time in or about Michaelmas term, 1783, the plaintiff exhibited his bill of complaint against your petitioners, thereby stating, amongst other things, that in or about the month of June, 1780, the plaintiff entered into and concluded a contract with Joseph Mellish, esq. in the said bill named, for the absolute purchase of the fee-simple and inheritance of a certain piece or parcel of ground, together with two messuages, tenements, or dwelling houses thereon erected and built in the said bill mentioned, whereby the said Joseph Mellish stipulated and agreed to execute a good and sufficient conveyance of the premises to the plaintiff; in consequence whereof the plaintiff in the month of July, 1780, entered into a treaty for the sale of the said grounds, messuages, or tenements and premises to your petitioner, and your petitioners agreed with the plaintiff to become purchasers thereof for the price or sum of 431*l.* 10*s.* Whereupon a certain contract or agreement in writing, bearing date the 5th day of July, 1780, was signed by your petitioners in the words and figures following, that is to say, “ Lon-
“ don, July 5, 1780. Memorandum. We have this day

" purchased of John Spurrier, two freehold houses in
" Hayes-court, St Ann's, Soho, (late in the possession
" of Mr. Todd, haberdasher, but untenanted,) at the sum
" of 43*l.* 10*s.* and have paid two notes of hand of £100
" each, one payable in ten days, the other in one month,
" and we do hereby promise to pay the remainder on
" or before Michaelmas day next, together with 5 per
" cent. thereon, from the 1st day of August, and if the
" said balance should not be paid by the time aforesaid,
" we agree to pay in lieu of interest upon the same a
" clear rent at the rate of £42 per annum, until the same
" is paid, out of which rent the said Spurrier agrees to
" allow 5 per cent. on so much of the money as he shall
" have received prior to Michaelmas day." And the
said plaintiff further stated, that in pursuance of the said
agreement your petitioners actually signed and delivered
to the plaintiff such two promissory notes as in the said
written agreements mentioned, for such two sums of
£100 each, which had been since paid by your petitioners
to the plaintiff; and that immediately after the signing
the said agreement the plaintiff delivered up to your pe-
titioners respectively the possession of the said two mes-
sages or dwelling-houses, and your petitioners have
~~ever since~~ been and are now in the possession thereof, and
of the rents and profits thereof. And the said bill prayed
that defendants might be compelled to perform and carry
into execution the said contract and agreements entered
into between the parties, by accepting of a conveyance of
the said two messuages, tenements, or dwelling-houses,
and paying to the plaintiff the said sum of 23*l.* 10*s.*
together with all arrears of rent due for or in respect of
the premises, or that your petitioners might be decreed to
deliver up the possession of the premises to the plaintiff,
and account with the plaintiff for the rents and profits
thereof, the plaintiff being ready in such case to account
for the money he had received in respect of the said

contract. And that all accounts might be liquidated and settled between the plaintiff and your petitioners.

To which bill the petitioners appeared and put in their answer, and admitted the said contract or agreement, dated the 5th July, 1780, and thereby insisted and submitted that the said agreement was usurious, unconscionable and void.

That the same came on to be heard upon bill and answer before his then honour the master of the rolls on the 13th day of May, 1784, when his honour was pleased to order and decree that it should be referred to Mr. Hett, one of the masters of this honourable court, to see whether the plaintiffs could make a good title to the premises contracted for by your petitioners, with the usual directions for production of deeds, &c. and reserved all further directions, until after the master should have made his report; that the master by his report, dated 29th November, 1786, certified that he was of opinion that the plaintiff could make a good title to the premises contracted for by your petitioners. That this cause came on to be heard upon the master's report, before his then honour the master of the rolls the 15th day of February, 1787, for further directions, when his honour was pleased to order and decree, that the said agreement dated the 5th day of July, 1780, in the pleadings mentioned, should be specifically performed and carried into execution, and that the master should take an account of what remains due to the plaintiff from your petitioners under and according to the terms of the said agreement for the purchase of the said two houses, and upon the plaintiff his executing to your petitioners a proper conveyance of the said two houses, (such conveyance to be settled by the said master in case the parties differ about the same,) it was ordered that petitioners do pay unto the plaintiff what the said master should find to remain due from them for such purchase money.

That the said master by his report made in this cause, dated 13th December, 1791, certified amongst other things that he had taken an account of what remained due to the plaintiff from your petitioners, under and according to the terms of the said agreement for the purchase of the two houses in the said decree mentioned, and he found that there is now remaining due to the plaintiff from your petitioners in respect of the said sum of 431*l.* 10*s.* the purchase money agreed to be paid for the said two houses, the principal sum of 231*l.* 10*s.* your petitioners having paid to the plaintiff the sum of £200, in part of the said sum of 431*l.* 10*s.* and he also found that there was then remaining due from your petitioners to the plaintiff for rent of the said premises at £32 per ann. the nett rent agreed to be paid for the same, after deducting £5 per cent. per annum on the money paid on account as aforesaid, from the 1st day of August, 1780, to the 1st day of November, 1791, the quarter day of payment of such rent next preceding the date of the said report, being 11 years and a quarter, the sum of £360, and the same being added to the said sum of 231*l.* 10*s.* they make together the sum of 591*l.* 10*s.* which sum of 591*l.* 10*s.* he found to be due to the plaintiff from your petitioners, under and according to the terms of the said agreement. And upon the plaintiff's executing to your petitioners a conveyance of the said two houses they your petitioners are to pay said sum of 591*l.* 10*s.* to the plaintiff, and thereupon he is to deliver to your petitioners all deeds and writings in his custody or power relating to the said purchased premises.

That this cause coming on to be heard for further directions before his honour the present master of the rolls on the 22d day of February, 1792, his honour was pleased to order and direct, that upon your petitioners their paying unto the plaintiff the said sum of 591*l.* 10*s.*, together with interest for the same at the rate of £5 per cent. per ann. from the 13th day of December, 1791, the date of the

master's report, to the time of the date of the conveyance thereby directed to be executed, the plaintiff should execute a conveyance of the premises in question to your petitioners, and deliver up to your petitioners all deeds, papers, and writings in his custody or power.

That your petitioners apprehend they are aggrieved by the said decrees or decretal orders, in as much as the same direct the said contract or agreement to be specifically performed and carried into execution, and has given consequential directions: Whereas your petitioners are advised the said agreement is usurious and void, and that the plaintiff's bill ought to have been dismissed with costs; and in case this honourable court shall be of opinion that the said contract should be carried into execution, your petitioners conceive themselves aggrieved by the said decrees in directing the master to take an account of what was due from your petitioners according to the terms of the said agreement, Whereas they insist that they ought to have been charged only with interest at the rate of £5 per cent. on the said sum of 231*l.* 10*s.* and that directions ought to have been given for computing the same accordingly.

Wherefore your petitioners do humbly appeal from the said decrees (a) of the 13th day of May, 1784, the 15th day of February, 1787, and 22d day of February, 1792, to your lordship, and humbly pray that they may be reversed, and that the said bill may be dismissed with costs, to be taxed in the usual manner, or in case your lordship shall not think proper so to do, that your lordship may vary the said decree by referring it back to the said master, to whom this cause stands referred, or transferred, to compute interest on the said sum of 231*l.* 10*s.* at and after the rate of £5 per cent. per ann. only from the time of the delivering possession of the premises in the agreement in the pleadings mentioned to the time of

(a) The decrees were upon hearing this appeal confirmed.

the execution of the conveyance in the last decrees directed.

And your petitioners shall ever pray, &c.
We humbly conceive it is proper to appeal in the above cause.

J. Mansfield.

R. Richards.

The Form of a Petition for re-hearing a Cause. (a) In Chancery.

Between John Stagg, and others, creditors of Samuel Hendy, deceased, and Mary Masters, widow, and other legatees of the said Samuel Hendy, on behalf of themselves, and the rest of the creditors and legatees of the said Samuel Hendy,
Plaintiffs;

and

Anthony Freeman, surviving executor of the said Samuel Hendy, deceased, Joseph Percival, executor of John Cox, another of the executors of the said Hendy, Elizabeth Punter, executrix of Joseph Punter, the other executor of the said Hendy, Joseph Hendy, and Thomas Pope,
Defendants.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiffs,
Sheweth,

That the said Samuel Hendy, deceased, being indebted

(a) A petition for re-hearing a cause, must be presented within a month after the order pronounced. Ord. Canc. Bea. Ed. 339. And a deposit of 10*l.* made with the register. Ord. Canc. 7th February, 1794. Bea. Ed. 458. 4 Bro. C. C. 546.

to your petitioner, John Stagg, and divers other persons by bond and simple contract, and being seised and possessed of divers real and personal estates, by his last will and testament, in writing, dated the 20th of March, 1739, he thereby directed that all his mortgages, debts, and other incumbrances whatsoever, should be, as soon after his death as possible, justly paid, with his money legacies, given by his will, in such manner as therein after directed by his trustees and executors; and after giving by his said will to your petitioner, Mary Masters, and divers other persons, several pecuniary and other legacies, he gave and devised to Elizabeth Punter, yearly, during her life, one annuity or rent-charge of £30 per annum, to be issuing out of, and chargeable on all his lands, tenements, and hereditaments, in Bathford in the county of Somerset, to be paid her half-yearly, with full powers of entry and distress, in case of non-payment; and for the better and more effectual paying off his debts, money legacies, and general expences, and the performance of his will, he thereby gave and devised to the said John Cox and Joseph Punter, and to the defendant, Freeman, and their heirs for ever, all his lands and hereditaments in Gloucester, Tiverton, and Weston, whereof he was seised in fee, or any in trust for him; and he also gave and bequeathed unto the said John Cox, J. Punter, and the defendant Freeman, all his personal estate, whatsoever and wheresoever, not before given and bequeathed, upon trust, to sell and dispose of his said lands and personal estate, and with the monies to be raised by sale thereof, first to pay his said debts and funeral expences, and after that, the money legacies thereby given; and if the monies arising by sale of his said lands and personal estate, should fall short for the purposes aforesaid, he thereby willed, and directed, and appointed, that what should so fall short should be supplied out of the rents and profits of his lands and estate in Bathford aforesaid, until the same should be all fully paid and satisfied; and he

thereby charged his said lands at Bathford with the payment of the same; and by his said will he gave and devised unto the said Cox, Punter, and Freeman, and their heirs, one clear yearly rent-charge of £15 a year, to be issuing out of, and chargeable on his said lands and hereditaments in Bathford, with power to enter and distrain for the same, in case the said rent-charge should not be paid, upon trust, that they and the survivor of them, and his heirs, should yearly, on Good Friday, for ever, lay out £5, part thereof in bread, and give and distribute the same to such parish poor people as they shall think fit; and directed, that the remaining £10 a year should be given and disposed of, at the discretion of his said trustees, to such poor distressed clergymen as they should think fit and proper objects of his said charity; and directed, that if either of his said trustees should die, the survivor should choose another fit person in his room, in three months after his death; and further directed that his said trustees should, out of the monies so to be raised, pay off and discharge his said lands and estates at Bathford, from all other debts and charges, save as aforesaid, and after all his debts, money legacies, and funeral expences, with his trustees charges, should be fully paid and satisfied, he gave his said lands and hereditaments at Bathford (but charged as aforesaid) to the defendant Joseph Hendy, who was the eldest grandson of his brother James Hendy, and whom he thereby calls his heir-at-law; and appointed the said Cox, Punter, and Freeman, his executors; and by a codicil, annexed to his will, gave some other pecuniary legacies.

That the said Cox, Punter, and Freeman, proved the said will and codicil, and possessed the said testator's estates; but the said testator having contracted for sale of part of the real estates, by his will devised to be sold, and the defendant, Thomas Pope, alledging he was the testator's heir-at-law, and setting up some claim as such.

That in or about Hilary term, 1739, the petitioners

filed their bill in this honourable court, stating the several facts above-mentioned, praying an account of the said testator's real and personal estate, and of his debts, legacies, and funeral expences; and to have the said real estates, or that a sufficient part of them should be sold, and that the money arising thereby might be applied in payment of his debts, and legacies; and that the defendants, Cox, Punter, and Freeman, might execute the trusts of the said will, and for further relief.

To which bill the several defendants appeared, and put in their answers; and the defendants, Hendy and Pope, by their answers, set out their several pedigrees, as heirs-at-law to the said testator; and the said cause being at issue, several witnesses were examined therein, and the same came on to be heard in court on the 8th of February, 1733, when your Lordship declared that the testator's will was well proved as against the parties to this suit; and it was referred to Mr. Spicer, one of the masters of this court, to take an account of the said testator's personal estate, and of the rents and profits of the real estate devised to be sold, and of his debts, legacies, and funeral expences; and it was also declared, that such part of the testator's real estate, as was by his will directed to be sold, should be sold before the said master; and the master was to inquire what contracts had been entered into by the testator for the sale of any part of his real estate which were to be performed, and the money arising thereby was to be considered as part of his personal estate; and that out of the said testator's personal estate, and the rents and profits of his real estate devised to be sold, and the money arising by the sale thereof, his debts and funeral expences were directed to be first paid, and then his pecuniary legacies; and in case the said estates should not be sufficient for that purpose, it was directed, *that such deficiency should be made good out of the rents and profits of the said testator's estate at Bathford*: and the master was directed

to take an account of the rents and profits of the said testator's estate at Bathford, which were to be applied in payment of any annuities charged on that estate by the testator's will; and in payment of such of the testator's debts and pecuniary legacies as should not be otherwise satisfied; and the master was to take an account of the incumbrances (if any) on the said Bathford estate (except the annuities charged thereon by the testator's will,) which were thereby directed to be discharged out of the testator's personal estate, and out of the money arising by sale of the real estate devised to be sold, so far as the same would extend, after payment of the said testator's other debts and legacies; and if the several estates, before directed to be applied for payment of the testator's debts and legacies, should not be sufficient for that purpose, it was directed that the pecuniary legatees should abate in proportion; and it was ordered, that the annuities charged on the Bathford estate should be paid to the respective annuitant; and that the £15 devised to the three defendants, the trustees, and their heirs, should be applied by them to the charitable uses directed by the said will, with directions for choosing new trustees, in case of their death; and it was ordered, that the surplus profits of the Bathford estate (if any), after payment of the several sums before directed to be paid thereout, should be paid to the defendant Joseph Hendy; and that all parties were to be paid their costs, to be taxed by the said master, out of the testator's estate.

That the said testator's several estates at Gloucester, Tiverton, and Weston, were afterwards sold before the master, and the several accounts, directed by the said decree, being gone through, and the said suits, which abated by the death of the defendant Cox, being revived against the defendant Percival, his executor.

That the said master, by his general report, bearing date the 18th of February, 1743 (which has been duly con-

firm,ed,) certified, that the said John Cox had received from the said testator's personal estate, and from the rents of his estates devised to be sold, and of the Bathford estate, and also by the sale of the estates devised to be sold, and of the estates contracted for by the said testator, several sums, amounting together to the gross sum of 1,972*l.* 0*s.* 0½*d.*; that the said defendant Cox had paid several sums, in part, of the annuities charged on the Bathford estate, amounting to £255; but that he had not allowed the same, as they were in payment of legacies in prejudice of the testator's creditors; and the said master further certified, that the said defendant Cox had paid in discharge of a mortgage upon the said Bathford estate, together with some other of the said testator's creditors, the sum of 1,657*l.* 10*s.*; and in discharge of some of the testator's debts, and otherwise on account of his estate, several other sums, amounting to 797*l.* 2*s.*, making together 2,454*l.* 12*s.* 10*d.*, which, with 5*l.* only allowed in part of 59*l.* 2*s.* 7*d.* laid out for testator's funeral, made in the whole 2,459*l.* 12*s.* 10*d.* and being deducted from the said 1,972*l.* 0*s.* 0½*d.*, there remained in the defendant Cox's hands, 2,514*l.* 7*s.* 3½*d.* 2½*d.*

And the said master further certified, that the defendant Punter had received from the testator Henry's personal estate, and the rents of the Bathford estate, 257*l.* 5*s.* 7*d.*, and that he had paid thereout towards the discharge of the said annuities, charged on the said estate, several sums, making together £140, which the said master had not allowed, such payments having been made to legatees, in prejudice of the testator's creditors; and that the defendant Punter had paid, on account of the said Bathford estate, several sums amounting to 104*l.* 1*s.* 4½*d.*, which being deducted from the said 257*l.* 5*s.* 7*d.* there remained 152*l.* 4*s.* 2½*d.* 2½*d.*

And the said master further certified, that the defendant Freeman had received from the said testator's estate 6*l.* 2*s.* and that he had taken an account of the said

testator's debts, amounting to 2,165*l.* 13*s.* 8½*d.*, and of the several legacies given by his said will, amounting to 2,227*l.* 10*s.*

And the said master further certified, that he had taxed the costs of your petitioners, the plaintiffs, and of the defendant Percival, the executor of the late defendant Cox, at several sums, amounting to 527*l.* 2*s.* 6*d.*, which being deducted out of the money in the said defendant Percival's hands, there remained clear 1,987*l.* 4*s.* 9½*d.*; and that he had taxed the costs of the defendants Punter and Freeman, at 52*l.* 9*s.* 2*d.*, which being deducted from the said 152*l.* 4*s.* 2½*d.* in the defendant Punter's hands, there remained 99*l.* 15*s.* 0½*d.*, which said 1,987*l.* 4*s.* 9½*d.*, 99*l.* 15*s.* 0½*d.*, and 6*l.* 2*s.* in the defendant Freeman's hands, made together 2,093*l.* 1*s.* 10*d.*, and was the clear amount of the said testator Hendy's estates.

To this report the defendant Percival, the executor of the late defendant, Cox, took an exception, for that the said master had not allowed the whole 59*l.* 2*s.* expended in the testator Hendy's funeral, and which, upon hearing, was allowed as to the sum of 54*l.*; and the same being deducted from the said 1,987*l.* 4*s.* 9½*d.*, the balance in the said defendants' hands, reduced the same to 1,933*l.* 4*s.* 9½*d.*.

And the said master having, by his said report, certified, among the said testator Hendy's debts, several sums to be due to the late defendant Cox amounting to 962*l.* 15*s.* 2*d.*, which being deducted, and retained by the defendant Percival, his executor, out of the said 1,933*l.* 4*s.* 9½*d.*, there remained in his hands only 970*l.* 9*s.* 7½*d.*, which by order, dated the 31st of May, 1745, was paid into the Bank, and placed to the credit of this cause; and the said master having stated, by his said report, that he found the sum of 327*l.* 12*s.* 8*d.* to be due to your petitioner John Stagg, for principal and interest upon the said testator's bond, and also the sum of 499*l.* 6*s.* 4*d.* to be due to John Chivers, upon another

bond of the said testator. By order, dated the 11th of December, 1745, it was directed, that out of the said money in the Bank the said several sums of 327*l.* 12*s.* 8*d.*, and 499*l.* 6*s.* 4*d.* should be paid to your petitioner and the said John Chivers, with subsequent interest, to be computed by the said master, and which was paid accordingly, and reduced the cash in the Bank to 97*l.* 18*s.* 8*d.*; and the said master having, by his said report, taken the subsequent account of the rents and profits of the Bathford estate received by the defendants Freeman and Punter, to Lady Day, 1744, he certified, that there remained in their hands, on that account, 67*l.* 11*s.*; and that he had taxed their subsequent costs of 33*l.* 9*s.* 10*d.*, which being deducted therefrom, there remained 28*l.* 1*s.* 2*d.*; and that he had taxed your petitioners, the plaintiffs, subsequent costs at 92*l.* 14*s.* 1*d.*; and the defendant Percival, the executor of the late defendant Cox, his subsequent costs at 57*l.* 2*s.* 8*d.*

That by an order made in this cause, dated the 4th of August, 1746, your petitioners' said subsequent costs were directed to be paid to their solicitor out of the said 97*l.* 18*s.* 8*d.* cash remaining in the Bank; and that the said 57*l.* 2*s.* 8*d.* the subsequent costs of the defendant Percival, the executor of the late defendant Cox, should be paid by the defendants Punter and Freeman, which was afterwards paid accordingly, so that there now remains in the Bank only 5*l.* 4*s.* 7*d.*; and in the hands of the said defendants Punter and Freeman, in the whole upon the above several accounts, 67*l.* 15*s.* 6½*d.*

That there is now remaining unpaid of the debts of the said testator Samuel Hendy, as appears by the said report of the 18th of February, 1743, several sums amounting to 365*l.* 3*s.* 9½*d.* and also a debt of 65*l.* and upwards, claimed by William Edwards since the making the said report, and which, by an order of this court, he is to be at liberty to prove before the said master; over and besides the several sums of 225*l.* and 140*l.* paid by the late de-

defendant Cox, and the defendant Punter, in part of the annuities charged by the testator's will on the said estate at Bathford, as stated by the said master's said report, and for which they have as yet received no satisfaction; besides the arrears of such annuities since incurred, and all the money legacies, amounting to 2,227l. 10s.

That the said Joseph Punter is lately dead, having appointed the defendant Elizabeth Punter, his executrix, and the said suit is since duly revived against them; and the said Joseph Hendy being also dead, without issue, leaving George Hendy, his cousin, and heir-at-law, and your petitioners having discovered that Mary Meddlcott, and Joseph Clements are the heirs-at-law of the said testator, Samuel Hendy, and the said George Hendy setting up some claim to the said estate at Bathford, as heir-at-law to the said Joseph Hendy, your petitioners, the plaintiffs, have since brought their supplemental bill against them, the said George Henry, Mary Meddlcott, and Joseph Clements, touching the same, who have put in their answers thereto; and the said cause is set down and now stands about thirty-six off, for hearing before your lordship, touching such supplemental matter.

That it appears to have been the intention of the testator by his said will, that all his debts, money legacies, and funeral expences, and the expences of his trustees, should be fully paid and satisfied before any benefit should arise to the said Joseph Hendy, the devisee of the said Bathford estate; and your petitioners are advised, that in case it had been known or apprehended at the hearing of this cause, that there would have been so great a deficiency in the fund (exclusive of the said Bathford estate) for paying the said debts and legacies, the court would have then decreed, that the said estate should have been sold subject to the several annuities and charges thereon; and have directed the money accruing by sale thereof, to have been applied for, or towards satisfying such deficiency; and the rather as the said estate is of the yearly value of £62

only, or thereabouts, and if sold, will not raise money sufficient to satisfy the debts of the said testator, remaining unpaid, and the money legacies given by his said will; and as 1657*l.* 10*s.* part of the monies arising from the testator's other estates, hath been necessarily applied in discharging the mortgage upon the said Bathford estate, together with some other of the said testator's estates which subsisted at the time of the said testator's death, in order to make a title to such other estates to the purchasers thereof, and accounting for the rents and profits of the said Bathford estate is attended with great expence and (after deducting the same) produce but little towards discharging the said debts of the testator, remaining unpaid, and there is not the least probability that such debts can be paid in a great number of years, if at all, or that the said money legacies can ever be paid by such rents and profits, so that the said devise to the said Joseph Hendy may take place.

That the matter of the said supplemental bill, and that touching which your petitioners apply to your lordship for a re-hearing, are relating to the same estate, and therefore proper to be heard together, if your lordship shall please to order the same.

Your petitioners therefore most humbly pray that your lordship will be pleased to order that this cause may be re-heard, as to the said testator Samuel Hendy's said estate at Bathford; and that the same may be decreed to be sold in such manner as your lordship shall think fit, for the purposes aforesaid; and that your lordship will be pleased to order the same to come on at the same time with the said supplemental cause.

And your petitioners will ever pray, &c.
We conceive this cause is proper to be re-heard, touching the matter mentioned in the petition, if your lordship shall think fit.

Richard Wilbraham,
John Brown.

tained, and **taken** care of for your petitioner the plaintiff, and the other persons interested therein, under the will of the said testator.

That by the decree made on the hearing of this cause, dated the 20th day of July, 1815, it was amongst other things ordered and decreed, that your petitioners should be at liberty to exhibit interrogatories, and examine witnesses, to prove the due execution of the will of the said testator as to his real estates; and your petitioner was to be at liberty to issue a commission for the examination of such witnesses, with the usual directions.

That the will of the said testator was proved by the defendants, the executors, in common form: and thereupon the said testator's original will was deposited in the Prerogative Office of the Archbishop of Canterbury, and the witnesses to the due execution thereof, are resident at Newcastle upon Tyne, in the county of Northumberland.

That your petitioner is advised, that to save the expence of bringing the witnesses to the said will, up to London, it will be necessary to issue a commission for their examination at Newcastle, aforesaid, upon the execution whereof the said testator's said original will must be produced.

Your petitioner therefore prays your honour, that the register, or other proper officer of the Prerogative Court of the Archbishop of Canterbury may be directed to deliver out the said original will of the said, William Clarke, the testator in the pleadings named, to a proper person to be named by your petitioners the plaintiff, and the devisees and legatees under the said will, for the purpose of being proved by the witnesses thereto at the execution of a commission to be issued by your petitioner, such person first giving security to

said register or other proper officer of the said Prerogative Court, to return the said original will, after the same shall have been proved, or in six weeks or other definitive time after the delivery thereof, not altered, erased or defaced.

And your petitioner will ever pray, &c.

This application should be by motion and not by petition; the latter if merely for the purpose of increasing the costs in the cause, should be objected to, upon the taxation, and reduced to the costs of a motion only.

The order is usually as follows :

Upon opening the matter, &c. by Mr. Mansfield of counsel for the defendant, *T. A.* it was alleged that this cause came on to be heard the . And it was ordered that the same should stand over with liberty for the said defendant *T. A.* to prove the will of *W. A.* dated , made and executed by him at Boulogne in France, whereof *T. A.* is the only devisee and executor. That the said defendant on the death of the said testator proved the said will in common form, and thereupon the said testator's said original will was deposited in the Prerogative Court of the archbishop of Canterbury; that George Wilson, one of the witnesses to the said will, is master of a packet-boat which goes from Dover to Calais and Boulogne in France, and Thomas Hulme, one of the other witnesses to the said will, now resides at Boulogne aforesaid, and William Baynes, the other witness, lives and resides in London. That as the said defendant *T. A.* cannot get the said George Wilson to London, or the said Thomas Hulme to come over from Boulogne, it is necessary that he should have a commission to be executed at Dover and Boulogne, in order to examine the said witnesses to prove the said will, at which commission it will be necessary that the

said will should be produced. And it being customary in such cases for the Prerogative Office to deliver out *original* wills to be proved at places distant, on taking bond from one or more sufficient persons in a reasonable penalty to return same, the said defendant *T. A.* hath applied to the register and record keeper of the said Prerogative Court, to have the said will delivered out accordingly, but they refuse to deliver up the same upon any security, but insist upon sending a messenger of their own with it, which will put the defendant to a considerable and unnecessary expence. It was therefore prayed that, &c. Whereupon, and upon hearing, &c. doth order that the said defendant *T. A.* be at liberty to take out a commission for the examination of witnesses at Bolougne and Dover aforesaid, to prove the said will, and that the plaintiff and the other defendant do join in commission and strike commissioners' names within six days after notice hereof, and in default thereof that said defendant *T. A.* be at liberty to sue out such commission directed to his own commissioners. And it appearing that the said defendant *T. A.* is the only devisee who can claim any real estate under the said will, (a) it is ordered, that the original will be delivered out by the proper officer of the Prerogative Court to a proper person (*sometimes to the associate*) to be named by the said defendant, in order to be proved at the execution of the said commission, such person first giving security to be approved of by the judge of the Prerogative Court, to return the same in *two months*, (or other reasonable time) from the delivery thereof to him.

The court of Chancery, where necessary, will make an order on the Prerogative Office to deliver a will to

(a) If any other person is interested, his consent seems necessary. Ambl. 343.

the Register's Office, and to lie there: ~~until~~ the court has no further occasion for it. So under a commission from Chancery, the Prerogative Officer was ordered to deliver a will to be proved in Gloucestershire, and the officer was not allowed to attend the execution of the commission: and where one witness to a will was abroad, on a commission to examine him, the will was sent out of the kingdom, the person taking it, first finding security to the prerogative office to return it. *Frederick v. Aynscombe*, 1 Atk. 628. Ambl. 345. *Morse v. Roach*. 2 Str. 691.

The court will order a will to be delivered out by the register of the ecclesiastical court to a solicitor to be produced at the hearing, on giving proper security to return it. *Williams v. Floyer*, Ambl. 343. *Lake v. Causfield*, 3 Br. C. C. 263.

If any stress be laid on the *hand-writing* of a will, it seems it cannot be made use of, if only the probate be in evidence; but on motion and notice (for it is not an order of course) an order will be made upon the register of the court, where the will is, to deliver the original will for the purpose of being produced at the hearing, upon giving security. 1 Madd. Pr. and Pr. in Chanc. 312. and the cases there cited.

Where there was a variance between the original will and the probate, Lord Hardwicke directed the cause to stand over, with liberty to apply to the spiritual court, to make the proper alterations in the probate: a suit to recal the probate for the purpose of correcting clerical errors is unnecessary; the court would order the executor or his solicitor to pay the costs of such suit, or the master would disallow them, as costs in the cause, 2 Atk. 50. *March v. Howe*. The proper course would be, for the officer of the spiritual court, to attend with the original will at the hearing, and the court would order the executor to correct the probate at his own expense, and the cause to stand over in the mean time.

Petition by a Party entitled to Stock and Money in the Bank on his attaining twenty-one.

In Chancery.

Between William Stroud, late an infant, by John Evill,
his next friend, Plaintiff;,
and
Benjamin Stroud, and others, Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The petition of the plaintiff William Stroud,

Sheweth,

That William Stroud, your petitioner's late father, by his will, dated 3d May, 1759, gave to Elizabeth his then wife and late wife of the said John Evill, £300, to be paid to her as therein mentioned, And also the house wherein he lived, for her life, and after her decease, to your petitioner for all the term and estate he had therein, and directed his brother, the defendant Benjamin Stroud, to add the life of your petitioner into the said house and premises as soon after his death as he conveniently could; and also gave to his said wife Elizabeth, all his plate and household goods, and gave and bequeathed to George Wansey, since deceased, and the defendant Langley, the clear yearly sum of £40, to be paid by his said executor by quarterly payments as therein mentioned, to commence from the first of such day as should next happen after his decease, upon condition that they should apply the same towards the maintenance of your petitioner till he should attain the age of twenty-one years, and then the said annuity to cease; and also gave your petitioner £1000, to be paid by the said defendant Benjamin Stroud, and in case your petitioner should die before he attained the age of twenty-one years, then he gave to his the said

testator's sisters that should be then living £100 each, and gave all the residue of his personal estate to his brother the said defendant Benjamin Stroud, whom he appointed sole executor thereof, and which will the said defendant Benjamin Stroud duly proved soon after the death of the said testator.

That your petitioner having exhibited his bill in this court, to have the said legacy secured, and an allowance settled for his maintenance, upon hearing this cause the 14th of December 1767, It was ordered and decreed that it should be referred to Mr. Graves, one of the masters of this court, to take an account of what was due for the arrears of the said annuity of £40 from the death of the said testator, and that what should be coming due on that account after a deduction of what should be allowed for the maintenance of your petitioner, then an infant, for the time past, should be paid by the said defendant Benjamin Stroud, for the benefit of your petitioner into the bank. And it was further ordered that the said master should inquire what part of the said testator's personal estate would be proper to be appropriated to answer the growing payment of the said annuity of £40 a year, and also the said legacy of £1000, subject to the contingencies in the said testator's will mentioned, and that what should be appropriated should be paid by the said defendant Benjamin Stroud into the bank; and that the same when so paid should be laid out in the purchase of bank £3 per cent. annuities in the name and with the privity of the accountant general of this court in trust in this cause. And it was further ordered that the growing payments of the said annuity of £40 a year, should be paid out of the interest of the bank annuities to be purchased with the monies, and should be set apart to answer the same, and that your petitioner William Stroud, when he should attain his age of twenty-one years, should be at liberty to apply to the court for raising and paying the said legacy of £1000 out of

the bank annuities so to be purchased as aforesaid. And it was further ordered that the said master should consider of a proper person to be appointed guardian of your petitioner, and also to see what was proper to be allowed for his maintenance and education for the time past from the death of his father, and for the time to come, and the said master was to be at liberty to make a separate report of such guardian and maintenance. And it was further ordered that what should be allowed for such maintenance for the time to come should be paid out of the said annuity of £40 a year to such person as should maintain your petitioner; and the said defendant John Langley, admitting that he had received several sums on account of the said annuity of £40 a year, It was further ordered that he should pay so much thereof as should appear to be remaining in his hands, after a deduction of what should be allowed for the maintenance and education of your petitioner into the bank, according to the directions before given. And the said defendant also admitting that he had placed out of the savings of the aforesaid annuity so paid to him on security for the benefit of your petitioner, It was further ordered that the said defendant should call in the money so placed out, and pay the same together with the interest made thereof into the bank according to the directions before given. And the said defendant Stroud, also admitting that he had in his hands the lease and title deeds relating to the leasehold estate given to your petitioner by his said father, It was further ordered that he should leave the same with the said master for your petitioner's benefit; and that all parties costs of this suit, to be taxed by the said master, should be paid by defendant Benjamin Stroud, out of the testator's estate, and any of the parties were to be at liberty to apply to the court as there should be occasion.

That Mr. Graves, by his separate report made in this cause, dated 20th June, 1768, certified that he approved

of John Evill, your petitioner's father-in-law as a proper person to be appointed guardian of your petitioner, and that he found there had already been a saving upon the £40 per annum given to your petitioner for his maintenance as aforesaid of near £200, and that he found the expences on account of your petitioner for about four years then last past, viz. from the month of May, 1764, at which time the said John Evill intermarried with Elizabeth Stroud, your petitioner's mother, had amounted annually to the sum of £20, and that your petitioner being then of the age of nine years, he was of opinion that from the 26th day of August, 1759, the time of the death of your petitioner's father, to the 26th of August, 1768, the sum of £20 a year was proper to be allowed, and from that time to the 26th of August, 1771, the sum of £25 a year was proper to be allowed, and from that time forward the sum of £30 a year was proper to be allowed for the maintenance and education of your petitioner.

That by an order, dated the 24th of June, 1768, It was ordered that the said master's report should be confirmed, and the said John Evill was thereby appointed guardian to your petitioner, and the several sums specified by the said report to be proper to be allowed for the maintenance and education of your petitioner were thereby directed to be paid agreeable to the said report.

That the said master by his general report, dated the 19th day of December 1768, certified that he found that the arrears of the said annuity of £40 from Midsummer 1759, being the quarter day next after the testator's decease, to Michaelmas then last, being nine years and a quarter, amounted to £370, he found the defendant Langley had received of the defendant Benjamin Stroud, and that the said defendant Langley, having placed out £100, part of said £370 on a security carrying interest at £4 per cent. per annum, for the benefit of your petitioner, had received for interest thereof from the 29th

September, 1764, when same was placed out, to the 25th December, 1767, when the same was called in, the sum of £13, which being added to the said £370, made together the sum of £383, with which he had charged the said defendant Langley, in discharge whereof he found the said defendant Langley had paid the several sums of money towards the maintenance and education of your petitioner, the particulars whereof he had set forth in the schedule to his said report, amounting together to £187, which he had allowed, and which being deducted from the sum of £383, with which he had charged the said defendant Langley, as aforesaid, there would remain in his hands on behalf of the before mentioned account £196; and the said master thereby certified that he had proceeded to inquire what part of the personal estate of the testator would be proper to be appropriated to answer the growing payments of the said annuity of £40, and also the legacy of £1000, subject to the contingencies in the said testator's will mentioned, and that he did conceive the sum of £1300 was proper to be appropriated to answer the purpose aforesaid.

That the said master by his said report further certified, that the said defendant Benjamin Stroud, had not left with him the lease and title deeds in the decree mentioned, although he had been duly summoned so to do, and that he had taxed the plaintiff's costs at the sum of 58*l.* 11*s.* 1*d.* and the said defendant Langley's costs at the sum of 24*l.* 3*s.* 4*d.* such costs so taxed amounting to 83*l.* 1*s.* 5*d.* were to be paid by the defendant Benjamin Stroud out of the testator's estate as the decree directs, and which report was by order dated the 23d day of January, 1769, absolutely confirmed.

That on the 28th day of January, 1769, the said defendant John Langley, paid the sum of £196 into the bank, pursuant to the said decree, and the said master's report, and that afterwards by virtue of an order dated

the 4th July, 1771, the said defendant Benjamin Stroud paid into the bank the sum of £700, in part of the said sum of £1300.

That by an order, dated 9th December, 1771, It was ordered that the said defendant Benjamin Stroud should pay into the bank with the privity of the accountant general in trust in this cause the sum of £300, in further part of the said sum of £1300, appropriated to answer the growing payments of the said annuity of £40, and also the said legacy of £1000, and it was thereby ordered that the said sum of £300, when so paid in, together with the said sum of £700, part of the sum of £896, cash then remaining in the bank on the credit of this cause, should be laid out in the purchase of bank £3 per cent. annuities in the name and with the privity of the said accountant general, in trust in this cause, upon the contingent account, and he was to declare the trust thereof accordingly, subject to further order; and it was further ordered that the sum of £196, residue of the said £896, should be laid out in the purchase of bank £3 per cent. annuities, in the name and with the privity of the said accountant general, in trust in this cause, for the benefit of your petitioner, and the said accountant general was to declare the trusts thereof subject to further order, and out of the interest to accrue on the said bank annuities so to be purchased, or as far as the same would extend, It was ordered that the allowance for your petitioner's maintenance should be paid according to the directions of the said decree and the before mentioned order of the 24th day of June, 1768.

That in pursuance of the said last mentioned order the said several sums of £300 and £700 therein mentioned, making together £1000, were invested with the privity of the said accountant general in the purchase of 1111*l.* 2*s.* 3*d.* consolidated 3 per cent. bank annuities, which now stands in his name, in trust in this cause. The contingent account and the said sum of £196 was invested with the privity of

thesaid accountant general in the purchase of 217*l.* 15*s.* 7*d.* like annuities, which also stood in his name, in trust in this cause, for the benefit of your petitioner.

That by an order made in this cause bearing date the 4th of July, 1775, it was ordered that it should be referred to the said master to examine and certify whether Samuel Potts was a proper person to place your petitioner with as an apprentice to the business of a haberdasher, and what sum was proper to be given the said Samuel Potts as an apprentice fee, and also how much would be proper to allow your petitioner for clothes, pocket money and other necessaries during his apprenticeship.

That in pursuance of the said order the said master made his report dated the 22d July, in the said year 1775, and thereby certified that he was of opinion that the said Samuel Potts was a proper person with whom to place your petitioner, and that the sum of £80 was a proper sum to be given to the said Samuel Potts as an apprentice fee with our petitioner; and also that it would be proper to allow the sum of £25 a year for clothes, pocket money, and other necessaries during his apprenticeship.

That by another order made in this cause, dated the 25th July, 1775, the said master's last mentioned report was confirmed, and it was thereby ordered that it should be referred to the said master to tax the costs of the said application, and that so much of the said 217*l.* 15*s.* 7*d.* consolidated 3 per cent. bank annuities purchased with the aforesaid sum of £196, as before mentioned standing in the name of the said accountant general of this court, in trust in this cause as aforesaid, as would be sufficient to pay such costs when taxed, and also the said sum of 80*l.* to the said Samuel Potts as an apprentice fee with your petitioner, should be sold with the privity of the accountant general, and out of the money arising by such sale, it was ordered that such costs when taxed, should be paid, and also the sum of 80*l.* to the said Samuel Potts on his executing the proper article or indenture of ap-

apprenticeship, and the said sum of 25*l.* a year was ordered to be allowed for your petitioner's clothes, pocket money, &c. during his apprenticeship, to be paid to the said John Ewill so long as he should have the care of your petitioner's maintenance, or until the further order of the court, out of the interest to accrue on the residue of the said 217*l.* 15*s.* 7*d.* consolidated 3 per cent. bank annuities, after the before mentioned sale, and the interest of the 1111*l.* 2*s.* 3*d.* like annuities standing in the said accountant general's name in trust in this cause, the contingent account as before mentioned.

That in pursuance of the said order the said master taxed the costs of the said application at the sum of 21*l.* 11*s.* 6*d.* which together with the said 80*l.* directed to be paid to the said Samuel Potts made together 101*l.* 11*s.* 6*d.* for the payment thereof the said accountant general sold 115*l.* 8*s.* 5*d.* part of the said 217*l.* 15*s.* 7*d.* and out of the moneys arising by such sale paid the said two several sums of 21*l.* 11*s.* 6*d.* and 80*l.* as directed by the said order.

That the said allowance for the maintenance of the petitioner hath been paid agreeable to the said order by the said accountant general up to the 10th day of May last, and there is now standing in the name of the said accountant general, in trust in this cause, 102*l.* 7*s.* 2*d.* consolidated three pounds per cent. bank annuities, being the residue of the said 217*l.* 15*s.* 7*d.* after the sale aforesaid, and in cash, being the interest accrued due on said 102*l.* 7*s.* 2*d.* bank 3*l.* per cent. consolidated annuities, after payment thereof of your petitioner's maintenance, as far as the same would extend, the sum of 3*l.* 1*s.* 4*d.*; and there is also standing in the said accountant general's name, in trust in this cause, the contingent account of 1111*l.* 2*s.* 3*d.* like annuities, which were purchased with aforesaid several sums of 200*l.* and 700*l.* mentioned to be paid into the bank by the defendant Benjamin Stroud in part of the sum of 1300*l.* reported by the said master's general report in

this cause as before mentioned, to be necessary to be paid into the bank by the said defendant Benjamin Stroud to answer your petitioner's legacy, of 1111*l.* given him by his said father's will, and also in cash the sum of 31*l.* 16*s.* being interest accrued due on the said 1111*l.* 2*s.* 3*d.* consolidated 3 per cent. annuities, after payment of such part of the said maintenance as the interest of the said 102*l.* 7*s.* 2*d.* fell short to satisfy.

That the said defendant Benjamin Stroud hath not yet paid into the bank the remaining 311*l.* to make up the said sum of 1300*l.* which the said master reported was necessary to be set apart to answer your petitioner's said legacy of 1111*l.* although he hath been served with a writ of execution under the seal of this honourable court of the before mentioned decree and master's report, and every other endeavour hath been made on the part and behalf of your petitioner to compel him thereto.

That your petitioner hath now attained his age of twenty-one years, and thereby become entitled as he is advised under his said father's will after payment of the costs of this application to have the said 102*l.* 7*s.* 2*d.* consolidated 3*l.* per cent. bank annuities, and the said 3*l.* 1*s.* 4*d.* cash, being dividends thereof transferred, and together with the future dividends that may become due thereon, paid to him; and as the said 1111*l.* 2*s.* 3*d.* bank 3*l.* per cent. consolidated annuities, will not if sold produce near the said sum of 1111*l.* 2*s.* 3*d.* which your petitioners would have been entitled to have had raised for his benefit out of the £1300 reported as before mentioned to be necessary to be appropriated for that purpose, by which means as well as by reason of the said defendant not having paid in the said remaining 311*l.* pursuant to the said master's report to answer the said legacy of 1111*l.* 2*s.* 3*d.* your petitioner would be greatly injured, and therefore he is advised, he is also entitled to have the said 1111*l.* 2*s.* 3*d.* consolidated 3*l.* per cent. bank annuities transferred, and also the said sum of 31*l.* 16*s.* cash, being the dividends thereof, and also the

dividends that may hereafter become due and be received by the said accountant general paid to him.

Your petitioner therefore prays that the said 112*l.* 7*s.* 2*d.* consolidated bank 3*l.* per cent. annuities now standing in the name of the said accountant general of this court, in trust in this cause, and the said sum of 3*l.* 1*s.* 4*d.* cash, being dividends thereof, and also the said sum of 111*l.* 2*s.* 3*d.* like annuities also standing in the said accountant general's name, in trust in this cause the contingent account, and the said sum of 31*l.* 16*s.* in cash, being also the dividends thereof, may be respectively transferred and paid by the said accountant general to your petitioner, and that the said accountant general may be directed to pay to your petitioner the dividends that may become due on the said respective sums of 112*l.* 7*s.* 2*d.* and 111*l.* 2*s.* 3*d.* bank 3*l.* per cent. consolidated annuities, until the transfer thereof is made to your petitioner.

And your petitioner will pray, &c.

Where a person entitled to money invested in stock in the name of the accountant general, petitioned, upon attaining twenty-one, to receive a dividend only, and that the Court would permit the money to remain in the name of the accountant general; the court refused the prayer of the petition, and ordered the petitioner to take the money. (a)

The Court has jurisdiction to make an order for payment of money out of court, after a bill has been dismissed for want of prosecution. (b)

Petition upon an intended Marriage with an Infant
Ward of the Court.

In Chancery.

Between the most noble Henry, Duke of New-
castle, an infant, by his next friend,
Plaintiff;

and

The right honourable Frances Countess
of Lincoln, the honourable lady Anna
Maria Pelham Clinton, and others,
infants, by their guardians,
Defendants.

To the right honourable the Lord High Chancellor of
Great Britain.

The humble petition of Stapleton Cotton, Esq. eldest
son and heir apparent of Sir Robert Salusbury Cotton,
of Combermere Abbey, in the county of Chester,
Baronet,

Sheweth,

That your petitioner hath made overtures of marriage
to the defendant, Lady Anna Maria Pelham Clinton,
and she hath, with the consent of her mother, the Duchess
of Newcastle, who is one of her guardians, and by and
with the consent of the right honourable Charles, Earl
of Harrington, John Gally Knight, and George Ma-
son, her other guardians, acceded to such proposals.

That the said Lady Anna Maria Pelham Clinton, be-
ing a ward of this honourable court, and under its pro-
tection;

4th December, 1800. Let
the said Stapleton
Cotton be at liberty to
lay proposals before
Master Leeds, in re-

Your petitioner therefore most
humbly prays your lordship
that it may be referred to
Mr. Leeds, the master to
whom this cause stands re-

spect to the settlement to be made on the intended marriage between him and the said defendant Lady Anna Maria Pelham Clinton, and see whether the same are reasonable and proper to be carried into execution. And let the said master state the same with his opinion thereon to the court; and let all proper parties have notice to attend the said master thereon; and after the said master shall have made his report, such further order shall be made as shall be just.

Loughborough, C.

ferred, to consider whether the marriage proposed between your petitioner and the said Lady Anna Maria Pelham Clinton, is a proper and suitable marriage for the said Lady Anna Maria Pelham Clinton, and that if the master shall approve of the same, then that your petitioner may be at liberty to lay proposals before him for a settlement, or for articles of settlement to be executed or entered into previous to the said marriage, and that when the same shall be approved, your petitioner may have the sanction and permission of this honourable court for carrying the said proposals into effect.

And your petitioner will ever pray, &c.

The consent of the court ought to be obtained, previous to the marriage of an infant ward: nothing excites the jealousy and resentment of the court of equity, more than the unlawful marriage of an infant. (a) And although the parties may not have had any knowledge of the infant being a ward of the court, the marriage has been held to be a contempt: (b) the filing a bill makes the infant a

(a) 2 P. Wms. 111. 2 Inst. 440.

(b) 3 P. Wms. 116.

ward of the court.(a) A marriage in Scotland on the day the bill was filed has been so decided : (b) and if a ground be laid before the court, supported by affidavit, of a suspicion even of an improper marriage being in contemplation, an injunction will be granted to restrain all communication with the infant by letter or otherwise, (c) and the infant will be restrained from receiving letters or messages, (d) and in such cases very slight, even hear-say evidence will be received.(e) The court will remove a guardian, even a mother, who can be shewn to have countenanced an intended marriage with an infant ward, and appoint another, restricting the guardian from giving a consent to the marriage, and ordering that a marriage shall not be had without the leave of the court.(g) All persons concerned in contriving a marriage with a ward of the court, with the knowledge of the infant being a ward, are punishable for the contempt.(h) A sequestration would be ordered against a peeress, if instrumental in the marriage of a ward of the court.(i) One *Mitchell*, a trading Middlesex justice, or to use the inflated language of the time, a magistrate, the principal contriver of a marriage with a ward of the court of large property, was committed for the contempt, and upon inquiry appearing to have been called to the bar, was disbarred and degraded, and struck out of the commission of the peace.(k) Where a guardian married his ward, who was of age, to his own son, a man of no property, it was held to be punishable by *information*.(l) So where the marriage of a ward of the court, had been, brought about by the husband falsely swearing that she was of age, though only fourteen, the clergyman was reprimanded, and the

(a) Ambl. 303.

(c) 14 Ves. 206.

(e) 1 Ves. 313.

(h) 2 Atk. 157.

(k) 2 Atk. 173.

(b) 6 Ves. 572.

(d) Dick. Rep. 88. 547.

(g) Dick. Rep. 547.

(i) 2 P. Wms. 112.

(l) 2 P. Wms. 560.

husband was indicted for a misdemeanor, (not for perjury,) and convicted, and sentenced to the pillory and imprisonment:(a) And although some years may elapse before the contempt comes to the knowledge of the court, the right to interpose will not be affected by efflux of time,(b) but in such case, the court will not interpose unless *strongly* called upon.(c)

Where the marriage of a ward of the court, takes place, without consent, upon an application by the guardian, or any party interested, all parties will be ordered to attend the court, and the husband will be committed, not into close confinement, though that course seems to have been pursued in very aggravated cases by Lord Hardwicke.(d) And upon executing a settlement approved by the master, the party is usually discharged.(e) In some cases the personal attendance in court of the party has been dispensed with, upon an offer to execute a settlement to be approved of by the master;(g) and there are instances where upon an *undertaking* only to make such a settlement, the court has discharged the party;(h) but this Lord Eldon, not considering sufficient to compromise the contempt has refused.(i)

The course of practice is to apply by petition for a reference to one of the masters, usually to the master to whom the cause is referred, to consider whether the intended marriage is proper and suitable, and upon his approval, for leave to lay proposals for a settlement before him; for if the master should disapprove of the marriage, or of the settlement, the consent of the court cannot be obtained.(k) Where a trustee has refused to consent or

(a) 7 Ves. 419. *The King v. Thompson*, ante, pa. 5.

(b) 1 Ves. and Bea. 297.

(c) 1 Ves. and Bea. 302.

(d) 8 Ves. 79.

(e) 1 Ves. J. 154.

(g) Ambl. 602.

(h) 3 Ves. 89. 4 Ves. 387.

(i) 8 Ves. 79.

(k) 3 P. Wms. 118.

object to a marriage, a like reference has been made to a master. (a)

And in settlements of the property of female wards of the court, it has been observed by the author of a very learned treatise on the principles of the court of Chancery, (b) that much will depend upon the fortune of the husband, and his conduct. If a beggar, a swindler, or impostor, marries the woman for the sake of her fortune, the court will not permit him to touch that fortune; but if the husband be of equal rank and fortune with the ward, and as considerable a settlement is made by the one as the other, attention will be paid to such circumstances. (c) The usual settlement seems to be, to settle one fifth of the dividends and interest of the property upon the husband, and the residue upon the wife, for her sole and separate use during their joint lives, with a clause to prevent anticipation, (d) and a power to the wife to give another fifth to the husband by will; the residue, subject to a provision for maintenance, to accumulate, and with the principal to go to the children at their ages of twenty-one or marriage, or if only one child, to that child: and in the event of a second marriage, (e) a power to the wife, to charge, by way of appointment to each child, a share not exceeding the share of each child, by the first marriage: (g) in case of no children, the husband surviving, the limitation is, in default of appointment, to her next of kin, exclusive of the husband (h) And in a gross case, on the part of the husband, the court has refused to pay his debts, out of the accumulation, (i) or give him any further interest, than in the event of surviving his wife, and no children, and an appointment in his favour by his wife. (k)

(a) 1 Coop. Ch. 225. (b) Madd. Chanc. (c) 1 Ves. and Bea. 303.
 (d) 5 Ves. 17. (e) 4 Ves. 386. (g) 5 Ves. 398.
 (h) 8 Ves. 74. (i) 5 Ves. 15.
 (k) 7 Ves. 419. 1 Ves. and Bea. 298.

If a lady, a ward of the court, marries, *after she is of age*, without the consent of the court, that is no contempt in the husband, nor can the court oblige him to execute a settlement, if the husband does not seek its assistance to obtain her property; but if the lady be under age, it is considered as a contempt, and the Court is enabled by imprisonment, to compel the husband to make a proper settlement.(a)

Petition for a Reference as to the Fitness and Propriety of a Marriage with an Infant Ward of the Court, and of a Settlement on the Issue.

In Chancery.

Between John Knight, Frances Douglas, an infant,
and others, - Plaintiffs ;
and

Charles Cameron, and others, Defendants.

To the right honourable the Master of the Rolls.

The humble petition of Jacob Hewlings, of Duke street, St. James's, in the city of Westminster, esq.

Sheweth,

That the fortune to which the plaintiff Frances Douglas is entitled consists of 1013*l.* 7*s.* 3*d.* bank, 3 per cent. annuities, and the sum of 14*l.* 8*s.* 7*d.* cash now standing in the name of the accountant-general of this court, in trust in the above cause, the plaintiff Frances Douglas the infant's account.

That the plaintiff Frances Douglas is an infant of the age of 18 years and upwards.

That your petitioner is of the age of 27 years and upwards, in good circumstances, and carrying on a pro-

fitable business as warehouseman in Duke street afore-
said, and your petitioner conceives that a marriage be-
tween your petitioner and the plaintiff Frances Douglas,
would be a fit and proper marriage, and highly advan-
tageous to the plaintiff. But in regard that she is a
ward of this court, such marriage cannot be had without
the consent of this court thereto.

Your petitioner therefore prays that it may be
referred to one of the masters of this court to en-
quire and certify whether a marriage between
your petitioner and the plaintiff Frances Douglas
will be a fit and proper marriage, And if the mas-
ters shall approve thereof that your petitioner or any
party interested, may be at liberty to lay proposals
before such master for a settlement to be made
for the benefit of the plaintiff and her issue up-
on the said marriage, and to report whether
the settlement to be so proposed is a fit and
proper settlement to be executed upon the oc-
casion.

And your petitioner will ever pray, &c.

Petition for Appointment of Guardian to consent to Marriage of an Infant.

To the right honourable the Lord Keeper of the Great
Seal of Great Britain.

The humble petition of Alice Colsell, spinster,

Sheweth,

That your petitioner's father, John Colsell, late of
Burnham in the county of Bucks, gent. deceased, by his
will, bearing date the 26th day of March, 1756, did
among other legacies and bequests, give to your petiti-

oner, by the description of his daughter Alice Colsell, the sum of £1500, to be paid unto her by his executors at the time of your petitioner's attaining the age of 21 years, or day of marriage, which should first happen, and in the mean time to be put out at interest by his executors, and the interest to be applied for the education and maintenance of your petitioner, and gave to your petitioner all such household goods, plate and linen, which he should have in his own possession at the time of his decease, and gave and bequeathed all the rest and residue of his personal estate to his four sons, William, Henry, Giles and John Colsell, equally to be divided between them, and constituted and appointed his said four sons joint executors of his said will.

That soon after the death of your petitioner's father, all the four executors proved his will in the prerogative court of the archbishop of Canterbury.

That your petitioner is an infant under the age of 21 years, and your petitioner's father has not by his will appointed any guardian of your petitioner, and that your petitioner's mother died in the life-time of her father.

That your petitioner is desirous that Mr. George Standford, her uncle, may be appointed her guardian.

Your petitioner humbly prays your lordship that Mr. George Standford may be appointed the guardian of your petitioner.

And your petitioner will ever pray, &c.

Affidavits verifying the allegations of this petition must be made and filed, and office copies taken to read upon the hearing, an attendance being ordered.

Guardian appointed to an orphan infant without property, to consent to her marriage. (a)

(a) 1 Madd. Rep. 243, In re. Woolscombe.

Petition under the Act of the 52 Geo. 3. c. 101, s. 12, for providing a summary Remedy for Abuses of Trusts created for charitable Purposes.

In Chancery,

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of George Greenhouse, William Waring, and others, inhabitants and parishioners of the parish of St. Lawrence, Ludlow, and of the parish of Bromfield in the county of Salop,

Sheweth,

That Charles Foxe, of Bromfield in the county of Salop, esq. by his last will and testament in writing, bearing date the 12th day of October, 1590, devised and bequeathed in the words and figures following: viz. " And whereas
" I have begone a foundation to erect four alms houses,
" or chambers, upon a piece of ground near the chapel
" of St. Leonard, in Cowe street, Ludlow, in the said
" county of Salop, which ground, together with the said
" chapel, I lately purchased to me and mine heirs of
" one , for the relief and maintenance of four
" poor and impotent persons, to be there from time to
" time kept and relieved, my will, intent, and meaning
" is, that if I shall happen to decease out of this mortal
" life, at any time before the said alms-houses be tho-
" roughly finished and erected, then mine executors,
" with so much of the rents, issues, revenues, and pro-
" fits of my mortgaged lands, and the sums of money
" thereupon and in redemption thereof due, shall build
" up and finish the same in as short time as conveniently
" they may, according to the plot or foundation there
" already begun, and for and towards the relief and main-

" tenance of the said four poor persons, as also for divine
 " service to be had and maintained as shall be hereafter
 " appointed, within the said chapel of St. Leonard — I
 " do give and bequeath unto Edmund Foxe, my brother,
 " and the said Edward Foxe, my son, two of the execu-
 " tors of my last will and testament, and to their heirs
 " and assigns for ever, all those four messuages or bur-
 " gage, and all lands, tenements, and hereditaments,
 " with their appurtenances, set, lying and being in the
 " city of Worcester, and suburbs thereof, now or late in
 " the tenure or occupation of one Margaret Keene, wi-
 " dow, late wife of John Callowe, for term of her life,
 " all which, or the reversion thereof, I lately purchased
 " to me and mine heirs, of one John Phillips, of London,
 " gentleman, and which also the said John Phillips before
 " that time purchased of the said John Callowe, being
 " now at the rent or value of eight pounds by the year,
 " upon condition and to the end that the said Edward
 " and Edmund, or their heirs, shall, within the space of
 " three years next after my decease (if in my life-time
 " the same be not to those uses by me conveyed and
 " assured,) by their sufficient deed, lawfully and duly
 " executed, enfeoffe some three, four, or more, of my next
 " name and kindred of my body descending: and, in de-
 " fault of them, some others, with them and their heirs,
 " of, and in the said messuages, lands, tenements,
 " rents, reversions, and hereditaments in Worcester
 " aforesaid, and suburbs thereof, to the uses and intents
 " hereinafter limited, mentioned, and appointed, viz. that
 " he or they to whom such feoffment shall be made, and
 " their heirs, shall stand seised of the same lands, tene-
 " ments, and hereditaments, and out of the rents, issues,
 " and profits thereof, from time to time shall yearly pay
 " unto the said four poor or impotent persons for the time
 " being that shall be placed or allowed in the said new
 " hospital or alms-houses, four pounds, to be equally
 " divided between them quarterly, at four terms or times

“ in the year; and, moreover, shall yearly pay unto the
 “ curate or chaplain of Ludlow for the time being, or to
 “ some other sufficient chaplain or minister, to read and
 “ say to the poor there divine service at certain times in
 “ the week as shall be appointed, forty shillings; and
 “ shall also pay and give yearly unto some sufficient and
 “ learned preacher, for a sermon to be made and preached
 “ in the said chapel at St. Leonard’s yearly, at some con-
 “ venient time within the feast of Christmas, six shillings
 “ and-eight pence, and other six shillings and eight-pence,
 “ for a like sermon to be preached in the said chapel
 “ yearly in the time of Lent, for the better edifying and
 “ instructing of the said poor, and such other people as
 “ shall then resort thither; and touching the residue of
 “ the said rents of the premises, shall remain, and be
 “ employed to and for the necessary repairing of the said
 “ alms-houses and chapel of St. Leonard from time to
 “ time, as need and occasion shall require; and for levy-
 “ ing and gathering the said rents yearly, and other neces-
 “ sary charges; and that the said feoffers, and their
 “ heirs, and the survivor and survivors of them, shall
 “ yearly make account unto the churchwardens of Brom-
 “ field aforesaid, howe the profits and revenues thereof have
 “ been defrayed, and what surplussage remaineth to pay
 “ and deliver unto the churchwardens of Bromfield afore-
 “ said; and then order to be taken howe the same surplus,
 “ if any be, shall be employed and bestowed by the advice
 “ of the vicar of Bromfield aforesaid for the time being.
 “ And I give also two bells, which I have in my cellar
 “ at Bromfield, to be hanged up in the steeple of the said
 “ chapel, to ring unto service when any is there said,
 “ and there to remain for evermore.”

That by indenture, bearing date the second day of April,
 in the thirty-fifth year of the reign of Queen Elizabeth
 Charles Foxe, the eldest son of the said testator, and the
 said Edward Foxe and Edmund Foxe, being the then sur-
 viving trustees under the aforesaid will, granted and con-

veyed the said premises to Henry Foxe, and several other persons of that name and family in the said indenture named, as trustees thereof, upon the trusts aforesaid, and certain articles, ordinances, and orders, also bearing date the same second day of April, and made by the said Charles Foxe, Edward Foxe, and Edmund Foxe, were annexed to the said deed, whereby, for the purposes aforesaid, it was ordered and declared, that when all the said three survivors, except three, should decease, the said three survivors should, within six months afterwards, convey and assure to the like number of the next of kin of the said Charles Foxe deceased, the said lands, tenements, and hereditaments, to the use of such new feoffees and such surviving feoffees, their heirs and assigns, upon the trusts aforesaid: and that the like order should be kept from time to time for ever after by the survivor of the new feoffees for the time being, and his and their heirs for ever, for and concerning the conveying the said premises to other feoffees, and their heirs, for ever, upon the like trusts as aforesaid; and none other, and upon no other consideration. And it was further ordered, that there should be continually for ever thereafter sustained, maintained, and kept within the said messuages so mentioned to have been erected for an alms-house, for four poor persons, who should be from time to time appointed by the said Charles Foxe, Edward Foxe, and Edmund Foxe, and after their deaths by the heirs male of the said Charles Foxe; and in default of such issue by the heirs male of Charles Foxe, his father, and in default of such issue by the heirs male of said testator; and that such four poor persons should daily serve God, and repair unto the said chapel for hearing divine service and sermons, as soon as such service or sermons should be there read or preached, as thereafter should be ordained. And it was further ordered, that when any of the rooms of the said four poor persons should become void by death or otherwise, then that any other poor person of one of

the parishes of Bromfield or Ludlow, should be elected there to continue during life. And it was further ordered, that out of the rents of the said messuages, situate in Worcester, there should be yearly, for ever, paid to the said four poor persons, the sum of four pounds, to be divided between them quarterly; and they thereby appointed Humphry Maddox, clerk, to celebrate divine service in the said chapel of St. Leonard's to the said poor people, and others that should resort thither; and also to execute the office of curate and minister during his life, as well by ministering of the communion at such convenient times in the year as was commonly used according to the usages of the church of England, also by ministering and reading divine service there every Wednesday and Friday, throughout the year, in the mornings of the said days, according to the usage of the church of England, which order for celebrating divine service they appointed should be for ever thereafter observed and kept by such person or persons as should be thereafter appointed and chosen to supply the said room of the office of a minister or curate thereof. And further, that in consideration of such divine service there should be for ever thereafter yearly paid, out of the rents of the said messuages in Worcester, unto the minister or curate there for the time being, forty shillings at the times therein mentioned. And further, that the minister there for the time being should also have, hold, and enjoy the said land, soil, and ground belonging unto the said chapel of St. Leonard's, and thereunto adjoining (except only one parcel of the said land to be inclosed by the said testator's executors, for a garden or gardens for the said four poor persons) during the time that he should exercise the office of curate there, and that it should be lawful for the said minister to take the rents and profits (except as before excepted,) and convert the same to his own use as a further recompence for celebrating divine service there in manner aforesaid. And further, that there should be for ever thereafter paid yearly, out

of the rents of the said premises, to a preacher, for two sermons to be preached, in the said chapel, six shillings and eight-pence for each sermon, one during Christmas holidays, and the other during Lent, for the better edifying and instructing of the said persons resorting there; and as touching the overplus and residue of the said rents, they appointed that the same should be employed from time to time for ever, as necessity should require, in and upon the necessary reparations of the said chapel and almshouses, and for receiving of the said rents, the receivers of which rents should be appointed in like manner as the curate or minister as aforesaid. And that the said feoffees for the time being for ever should yearly make account thereof to the wardens of the parish church of Bromfield aforesaid, how, and in what manner, the rents and profits should be bestowed, and the overplus, if any, should pay to the said churchwardens for the time being; and they, together with the vicar of Bromfield aforesaid, to bestow the same towards the increase of the yearly stipends appointed as aforesaid, and limited to him that should be chaplain or minister of the said chapel, or otherwise as to the discretion of the vicar of Bromfield for the time being should seem meet.

That new trustees of the said family were thereafter from time to time appointed; and the said chapel, almshouses, messuages, lands, and hereditaments were conveyed to and vested in them, upon the same trusts as aforesaid. And the said chapel was kept repaired from time to time.

That by indenture, dated the first day of October, 1684, between certain persons of the name of Foxe, reciting that the said chapel had been lately re-edified, the surviving trustees thereof, named in the said indenture, did enfeoff to the persons therein named, and their heirs, the said chapel and premises upon the trusts aforesaid, and according to the charitable intentions, mentioned and comprised in the said articles and ordinances.

That by indenture, dated the eighth day of October, 1771,

made between James Foxe, therein described as the surviving trustee of the said chapel, of the one part, and the bailiffs, burgesses, and commonalty of Ludlow, of the other part; reciting the death of Henry Foxe, on whose death the legal estate in the premises descended to infants; and that during their infancy and residence abroad, the said charity became neglected, and the chapel and alms-houses, and houses in Worcester, got into decay; and that the said houses in Worcester were to let on building leases, at small ground rents; and that from such rents the said alms-houses were repaired, and four poor persons therein maintained. And also reciting, that the said trusts had vested in James Foxe, therein described, and he was the only surviving trustee thereof, and that there were not known to be living any persons of the name or kin of the said Charles Foxe, the testator, whereby to fill up a sufficient number of trustees of that family for the continuing and perfecting the aforesaid charity; and that the bailiffs of Ludlow aforesaid had applied to the said James Foxe to vest the said chapel and alms-houses, and the said premises at Worcester, in them and their successors for ever, upon the aforesaid trusts and ordinances: And also reciting, that the said James Foxe had signed and delivered an account to the said bailiffs of the receipt and application of the rents of the said premises: It was witnessed, that for the continuing and perpetuating the said charitable work, and for establishing a sufficient number of trustees for the performance of the said charity, the said James Foxe did grant and convey unto the said bailiffs of Ludlow aforesaid, and their successors, for ever, in trust, and for the support of the said alms-houses, and four poor needy persons, to be paid, and kept, therein, from the rents and profits of the said premises, according to the original intent of the said charity, and for such other charitable uses and purposes set forth in the aforesaid indentures, articles, and ordinances the said chapel, alms-houses, messuages, lands, tenements,

and hereditaments, and the said premises at Worcester aforesaid. And the said bailiffs thereby acknowledged that the said James Foxe had deposited with them the said several indentures, articles, ordinances, and the several leases therein mentioned.

That the maintenance and stipend of the minister of the said chapel for the time being had been further, at different times, augmented and provided for by various other persons, who had granted certain endowments thereunto, payable for ever, and which consist of an annual payment of one pound out of a certain estate situate in the parish of Ludford; an annual payment of one pound out of a certain estate situate in the parish of Ashford Bowdler; the annual sum of fourteen shillings out of a certain leasows, called Chapel Leasows; and the annual sum of twelve shillings out of three houses situate in Durham; which said several sums passed with the conveyance of the said trusts into the hands of the said bailiffs of Ludlow aforesaid by the said recited indenture of the 8th October, 1771.

That upon the execution of the said indenture of the 8th October, 1771, the said bailiffs and corporation of Ludlow aforesaid entered upon and took possession of the said chapel, alms-houses, and all other the messuages, lands and premises belonging to the said charity, and entered into the receipt of the rents and profits thereof, and have ever since continued to hold the said charity premises.

That in the year 1773 the said corporation, without any authority, gave directions and caused the said chapel to be pulled down and destroyed, and sold, or applied for some other buildings, all the timber and materials thereof; and they received the produce arising from such sale, amounting to a considerable sum; but that they did not apply such produce to the purposes and upon the trusts of the said charity; and soon after such sale the said corporation granted a lease of the site of the

said chapel, and the chapel-yard adjoining, to a member of the said corporation, for a term of 99 years, at the rent of 1*l.* 15*s.* per annum: and since the demolition of the said chapel the proprietor, of the said estate in the parish of Ludford refused to pay the aforesaid annual sum of 1*l.* on the pretence, that there being no chapel existing, the said rent-charge for the minister could not be claimed or demanded.

That during the time the said chapel stood, many of the parishioners of the said parish where the chapel was situate, used to resort thereto for the purpose of attending divine service; and the ceremony of baptism and burial was frequently performed there; but since the chapel has been pulled down, and the scite thereof, and the yard adjoining, let as aforesaid, the said parishioners have been deprived of the said benefit, and all opportunity of resorting thereto; and have been prevented from using the said chapel-yard for the purpose of burials, which is attended with great inconvenience to the said parish, as the burying ground belonging to the said parish of St. Lawrence, which is the only burying-ground in the said parish, is infinitely too small for the purposes of burial in the said parish; and the bodies of deceased persons are often taken up and moved before they ought to be, in order to make room for the bodies of others.

That the corporation have constantly elected poor persons of the said town of Ludlow, to fill up the vacancies which have occurred in the said alms-houses, and have not elected any poor persons from the said parish of Bromfield, (except in one instance), since the said trusts came under their management. And the trusts of the said charity have been in numerous other instances mismanaged and neglected. When the said chapel was kept in repair, there were an excellent pulpit, and many good pews therein, and a very large congregation always attended divine service there; and when the same was

falling into decay, several of the inhabitants of Ludlow were about to make a subscription for the repairs thereof, which was opposed by the then rector of Ludlow, who stated, that he should be deprived of some Easter dues if the said chapel was repaired, the rector of Ludlow having but a small glebe, and chiefly depending for his income on his Easter dues.

That in the year 1773, the said chapel was pulled down, and the bell belonging to it was removed to the market cross, in the town of Ludlow, where it has ever since been and now remains; and the timber of the said chapel was either wholly, or for the most part, sold; and part of the said timber was used in building the house of one William Feltow, of the said town of Ludlow; and the stones of the chapel were applied in building a new bridge over the river Corve, in the said town; and some of the pews were removed from the said chapel to the parish church of the said town, and placed in galleries of the said church.

That the chapel-yard had many grave-stones in it, and was used as a burying ground for many years; and the chapel, when it was pulled down, might have been repaired at a small expence, the side and end walls being of great thickness, and quite sound; and the timbers, consisting of the beams, summers, wall-platts, and rafters of the roofs, were also sound and strong; and the decay was only in the tiling of the roof.

That there is only one church in Ludlow, which is not sufficient to contain one-fourth of the inhabitants; that two or three families use one pew; and that the church nearest to it is not in the same county; and that the rents and profits of the said trust estates, when the said leases have expired, will be much more than sufficient to answer all the purposes of the charity, but the said corporation have not rendered any account thereof to the vicar or churchwardens of Bromfield, aforesaid, or to any other person, and what they have received they have retained,

or in some manner 'embezzled' and misapplied; and the said corporation have omitted and neglected to register the said charity, and the purposes and trusts thereof, in manner directed by an act of parliament passed in the fifty-second year of the reign of his present majesty, intituled "an Act for the Registering and Securing of Charitable Donations,"(a) as by the said act they are bound to do.

That your petitioners are desirous of preserving the said charity, and of obtaining the directions of the court for that purpose; and of having the said chapel-yard applied as formerly, to the purposes of burial, and the funds of the said charity, and the materials of the said chapel, duly accounted for, and the produce thereof accumulated for the purpose of rebuilding the said chapel.

Your petitioners therefore pray, that it may be referred to one of the masters of this court, to inquire into the trust of the said charity, and to approve a proper scheme for the due regulation and management thereof; and that the said lease of the said chapel-yard may be delivered up to be cancelled, and that the said yard may be applied for the purposes of burial; and that an account may be taken of the want of repairs of the said chapel when the same was

(a) 52 Geo. 3. c. 102, a memorial of the real and personal estate, gross annual income, and general and particular objects of all charities and charitable donations in England and Wales already, or hereafter founded, the names, of the founders, and of the persons in custody of the deeds, &c. and of the trustees in possession, &c. to be registered with the clerk of the peace and enrolled in Chancery. s. 1, 2. If not registered a petition may be presented by any two or more persons to the lord chancellor, &c. to hear same in a summary way, &c. and make order thereon; s. 5. Exceptions as to royal foundations and certain institutions s. 10, 11.

taken down, and what sum of money it would now cost to rebuild the same chapel upon the same plan and dimensions as the said old chapel. And the said corporation may be ordered to account for all the rents and profits of the said trust estates received by them, or by their order, or for their use; and also for the timber, pews, stones, and all other materials of the said chapel, converted and disposed of by them; and that the amount of what shall be found due from the said corporation, upon taking the said accounts, may be directed to be paid into the hands of the accountant general of this court, in trust for the said charity. And also that what on taking the said account shall be found insufficient to rebuild the said chapel the said corporation may be ordered to pay such further sum into this court as will be sufficient to rebuild the said chapel, or to put the same into the condition it was in at the time it was taken down. And that proper persons may be appointed feoffees or trustees of the said chapel and charity premises. And that the said corporation may be ordered to convey the said premises to such new feoffees or trustees upon the trusts of the said charity, and that proper directions may be given for registering the said charity according to the provisions of the said act of parliament. And that the said corporation may be ordered to produce upon the oath of the treasurer, secretary, town clerk, agent, or other proper officer, and leave with one of the masters of this court for safe custody, all and every the title deeds, books, papers and writings in their custody or power relating to the said charity premises, or that your lordship

will make such other order in the premises as to your lordship shall seem meet.

And your petitioners will ever pray, &c.

George Greenhouse.

William Waring. (a)

The allowance of the attorney or solicitor general, and likewise an attestation by the attorney or solicitor, of the signatures by the petitioners, are required previous to presenting the petition to be answered, but stamps are not required.

The court of chancery has jurisdiction to remedy the abuse of a charity, as to the management of its revenues, by the governors; (b) although the heir of the founder and the visitor, is one of the governors; and if the heir becomes lunatic, the lord chancellor, on petition, acts as visitor. (c)

Where the king is founder, the crown is always visitor; but where a private person is founder, his heirs are visitors; but the founder may vest a visitatorial power in any other person, or his heirs. And in the latter case, the visitor being local, the court cannot interpose by granting a commission. (d) Local visitors only visit every three years, but they may hear complaints in the mean time; and it has been said, that if a visitor's reward is too small, the court may augment it. (e)

By an act of parliament made and passed in the 52 Geo. 3, c. 102. intituled, "An Act to provide a summary

(a) The Vice Chancellor ordered that the corporation should no longer remain trustees, but at their own expence convey to new trustees, and directed an account of the materials of the old chapel. the pews, and bills, and to pay the value, and an inquiry of what would be the expence of restoring the chapel and burial-ground. Exparte Greenhouse, 1 Madd. Rep. 92.

(b) 43 Eliz. c. 4.

(c) 13 Ves. 519.

(d) 3 Atk. 108.

(e) 2 Atk. 87.

“ Remedy in Cases of Abuses of Trusts created for Charitable Purposes ;”

Reciting that it is expedient to provide a more summary remedy in cases of breaches of trust created for charitable purposes: It is enacted, That, in every case of a breach of any trust, or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court of equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the Rolls for the time being, or to the court of Exchequer, stating such complaint, and praying such relief as the nature of the case may require; and it shall be lawful for the lord chancellor, lord keeper, and commissioners for the custody of the great seal, and for the master of the Rolls, and the court of Exchequer, and they are hereby required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing to determine the same, and make such order therein, and with respect to the costs of such applications as to him or them shall seem just; and such order shall be final and conclusive unless the party or parties who shall think himself or themselves aggrieved thereby, shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the house of lords, to whom an appeal shall lie from such order. Sec. 1.

That every petition so to be preferred as aforesaid, shall be signed by the persons preferring the same, in the presence of, and attested by the solicitor or attorney concerned for such petitioners, and every such petition shall be submitted to and be allowed by his majesty's attorney or solicitor general, and such allowance shall be certified by him before any such petition shall be presented. Sec. 2.

That neither the petitions, nor any proceedings rela-

tive thereto, nor the copies of such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever. Sec. 3.

A trustee of a charity, cannot, without an adequate consideration, let for ninety-nine years, not being the ordinary course of provident management, much less with covenants for perpetual renewal, without an equivalent for the inheritance. Lord Thurlow observed upon such a contract, that it ought never to have been performed between man and man. A farm lease, with the common husbandry covenants, cannot be granted by trustees of a charity for ninety-nine years, or of less duration, it must be for the usual term upon such a lease: (*a*) nor a building lease for nine hundred and ninety-nine years. (*b*)

The lease of a charity estate, consisting of houses, &c. set aside for under-value, if considerable in under-lease at a fine not conclusive: part being ascribed to the good will of a trade established, and repairs. An inquiry was directed, whether the rent was fair and adequate, distinguishing how much of the premium on the under-lease resulted from the good will and repairs, and how much from the value of the lease, above the rent reserved to the charity. (*c*) Where charity lands have been let at a great under-value, the lease has been set aside, and the lessee decreed to pay the arrears of rent, according to the full value, and to deliver up possession. (*d*)

A purchase of trust property, by trustees of a charity, for their own benefit set aside, after a considerable lapse of time and several assignments. (*e*)

Governors of a charity are not allowed to take leases of the charity lands. (*g*)

(*a*) 10 Ves. 555.

(*b*) 6 Ves. 452.

(*c*) 18 Ves. 315.

(*d*) 2 Vern. 414.

(*e*) 1 Coop. Ch. Rep. 146.

(*g*) 17 Ves. 500, 282.

Constructive trusts held not within the 52 Geo. 3. which gives relief upon petition in the case of charities (*a*)

Under the act of 52 Geo. 3. giving jurisdiction upon petition in charity causes, the trustees not appearing, were ordered to shew cause why the order prayed should not be made. (*b*)

Relief for charities by petition, instead of information under the 52 Geo. 3. being limited to questions of abuse of trust, as between trustees; and the object of the charity is not applicable to an adverse claim of land, as having formerly belonged to the charity. The jurisdiction substituting petition for information in cases of abuse of charity is discretionary, in the court, like the 40 Geo. 3. as to money intailed; (*c*) but under a trust as to the revenue, abuse by misapplication is controuled in chancery. (*d*)

Petition by a Creditor to come in and prove his Debt, before the Master, after the Time limited had expired, and after Report confirmed.

In Chancery.

Between Thomas Leigh, and others, Plaintiffs;
and

George Booth, and others, Defendants.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of George Leycester,
Sheweth,

That by the decree made on the hearing this cause, dated the 4th day of May, 1814, It was amongst other things, ordered and decreed that it should be referred to

(*a*) 1 Coop. Ch. Rep. 295.

(*b*) 1 Ves. and Bea. 496.

(*c*) 3 Ves. and Bea. 10.

(*d*) 2 Ves. and Bea. 134.

Mr. Steel, one of the masters of this court, to take an account of the said testator's debts, funeral expences, and legacies, and to compute interest on such of his debts as carried interest at the rate the same respectively carried. And the said master was to cause an advertisement to be published in the London Gazette for the creditor of the said testator to come in before him and prove their debts, and fix a peremptory day for that purpose. And in default thereof they were to be excluded the benefit of the said decree. And it was ordered that the said testator's personal estate should be applied in payment of such debts, in course of administration.

That the said master by his report, bearing date the 10th day of December following, which stands absolutely confirmed, amongst other things certified, that he had caused an advertisement to be published in the London Gazette of the 4th day of July last, for the creditors (if any) of the said testator Thomas Boothe of Dunham Massey in the county palatine of Chester, esq. deceased, peremptorily to come in and prove their debts before him on or before the 12th day of August, then next, or in default thereof that they would be excluded the benefit of the said decree. But he did not find that any of the said testator's debts remained unsatisfied.

That there now remains in the hands of the accountant general of this court the sum of 242*l.* 10*s.* 4*d.* residue of the said testator's personal estate applicable to the payment of the said testator's debts and legacies.

That the said testator Thomas Booth, was in his life-time and at the time of his death, justly and truly indebted to your petitioner in the sum of £420, for money lent and advanced by your petitioner to the said Thomas Booth, for securing the re-payment whereof with interest the said Thomas Booth made and executed a bond or obligation in writing, bearing date the 6th day of January, 1810, in the penal sum of £840, conditioned for payment to your petitioner, his executors, adminis-

trators and assigns, of the said principal sum of £420, and interest, on 6th day of June then next ensuing, the whole of which said principal sum of £420, and interest, is now due and owing from the estate and effects of the said Thomas Booth to your petitioner.

That your petitioner being uninformed of the said advertisement published by the said master, for the creditors of the said Thomas Booth, the testator, to come in before him and prove their debts, had no opportunity to claim the same before the said master had made his report.

Your petitioner therefore humbly prays, that he may be at liberty to come in before the said master, and prove his said debt, and that he may be paid the same out of the said sum of 2426*l.* 10*s.* 4*d.* now in the hands of the accountant general of this court, in trust in this cause, your petitioner hereby offering to pay the costs of this application and of the proceedings incidental thereto, to be taxed by the said master.

And your petitioner will ever pray, &c.

This application may be by motion or petition, and it is always at the costs of the party applying; and it would be adviseable to support it by an affidavit, verifying the allegations in the petition.

A creditor allowed on motion, to prove his debt under a decree upon a creditor's bill, though the money had been apportioned amongst the creditors (the assets being deficient) and the money transferred to the accountant general, to pay them and the costs of the suit, upon payment of the costs of the application, and the expence incidental thereto, in re-casting the apportionment amongst the creditors.(a)

[In causes where the Crown is interested, and it is necessary to make the Attorney-General a party, none of the King's counsel can be retained to plead against the Crown, unless an order be obtained from the Secretary of State for that purpose; which is done by petition in the following form, written upon unstamped paper, and left at the Secretary of State's Office.]

To the King's Most Excellent Majesty.

The humble Petition of James Gordon, Esq.

Sheweth,

That your petitioner is plaintiff in a cause in Chancery, wherein your Majesty's Attorney-General and others, are defendants.

That your petitioner hath hitherto, throughout the said cause, advised with your Majesty's Solicitor-General and William Cooke, two of your Majesty's counsel, learned in the law; but forasmuch as they cannot plead in the said cause, without your Majesty's royal licence to Mr. Solicitor-General and William Cooke, Esq. to be of counsel for him, in the said cause.

Your petitioner therefore most humbly prays your Majesty will be graciously pleased to grant your royal licence for the said Mr. Solicitor-General, and the said William Cooke, Esq. to be of counsel for your petitioner in the said cause, as often as there shall be occasion.

The Order made thereon is in the following Form.

George R.

Whereas James Gordon, Esq. hath, by his petition, humbly represented to us, that he is plaintiff in a cause

in chancery, wherein Our Attorney-General and others are defendants ; and that he hath hitherto advised with our trusty and well beloved Solicitor-General, and William Cooke, Esq. two of our counsel, learned in the law ; but forasmuch as they cannot plead for the petitioner in the said cause, without Our Royal licence dispensing therewith, he hath therefore most humbly prayed to Us, to grant Our Royal licence, to our said Solicitor-General and William Cooke, Esq. to be of counsel for him in the said cause. We are therefore graciously pleased to condescend to his request ; and We do accordingly hereby dispense with our said Solicitor-General and William Cooke, Esq. and give them power, licence, and permission to appear on the behalf of the said George Allen, to be of counsel for him in the said cause, as often as there shall be occasion.

Given at our court of St. James's, the 2d day of June, in the fiftieth year of our reign.

By his Majesty's command,
Sidmouth.

Solicitor-General and William Cooke, Esq.

License to plead.

The above order is written upon treble half-crown stamps. The whole expence is about eight pounds for one counsel, ten pounds for two, and twelve pounds for three. The order must be shewn to the counsel at the time of delivering their briefs.

PROPOSALS.

A PROPOSAL is a statement in writing of some special matter submitted to the consideration of one of the masters of the court, pursuant to an order made upon an application *ex-parte*, or a decretal order of the court.

Proposals are for a variety of purposes: for maintenance of infants, for the appointment of a guardian, for placing a ward of the court at the university, or in the army, or apprentice to a trade, for the appointment of a receiver, the establishment of a charity, &c.

A proposal is drawn by the solicitor, and fairly copied upon unstamped paper, and left at the Master's office, with a copy of the order of reference, and such affidavits in support of it as are necessary, and a warrant must be taken out, "upon leaving the plaintiff's (*or defendant's*) proposal for the appointment of a receiver," or for a settlement on the marriage of a ward of the court (*or other matter of reference*) and served upon the adverse clerk in court, as directed in the former part of this work, and at the return of that warrant, another warrant must be taken out, "to proceed upon the proposal," and served in like manner upon the clerk in court, and attended, and other warrants taken out and served until the proposal is allowed or disallowed by the master, and a report made upon it.

The following forms of proposals may convey to the young practicer, some information as to the shape in which a proposal is made, and the matter it usually contains.

The Form of a Proposal for making a Settlement on the Marriage of a Party.

In Chancery.

Between Edward Keating and Ann his wife, Plaintiffs ;
and

Edward Perryman, and others, Defendants.

The proposal of the plaintiff, Edward Keating, for
a settlement of the fortune of the plaintiff, Ann
Keating, his wife, and the issue of the marriage,
pursuant to the order made on the hearing of
this cause, dated the 24th day of February.
1816.

The plaintiff, Ann Keating, is entitled, under the will of her father, to the sum of £1800 South Sea annuities, which has been ordered to be transferred to the accountant-general of this court, in trust in this cause, and, by several payments in respect of costs and other charges, has been reduced to £1500, the plaintiff, Edward Keating, therefore proposes, that £900, part of the said £1500 South Sea annuities, now standing in the name of the defendant, Joseph Hudson, the executor, be transferred to the accountant-general of this court, to be placed to the credit of this cause, in trust, that the interest and dividends arising therefrom be paid to the sole and separate use of the plaintiff, Ann Keating, during her natural life; and from and after the decease of the plaintiff, Ann Keating, the said annuities shall be equally divided between such child and children of the plaintiffs, Edward Keating and Ann Keating, as shall be living at the time of her death, the share or proportion of the said annuities to be transferred to such of the children, being sons, as

shall be of the age of twenty-one years, and being daughters, shall be of the age of twenty-one years, or be married, as soon as conveniently can be done after the decease of the plaintiff, Ann Keating, together with a proportional part of the interest and dividends of such annuities as shall happen to be in arrear and unreceived, at the death of the plaintiff, Ann Keating, and the interest and dividends of the shares and proportions of such child and children as shall be infants at the death of the plaintiff, Ann Keating, as shall be then in arrear and unreceived, together with all future interest and dividends to arise, shall be applied for their respective maintenance, till such of them as shall be sons shall attain the age of twenty-one years, and such of them as shall be daughters, shall attain twenty-one years or be married, which shall first happen: and in case any of such child or children shall happen to die before his, her, or their respective shares or proportions shall become payable, then the shares or proportions of such of them so dying, together with the interest or dividends thereof, that shall happen to be in arrear or unreceived, shall go to and amongst the surviving child and children in equal proportions: and that the shares or proportions of such children, as shall be sons, shall be transferred to him or them, on his or their attaining the age of twenty-one years; and such of them as shall be daughters, on their attaining the age of twenty-one years, or marriage, which shall first happen.

And in case the plaintiff, Ann Keating, shall happen to die without leaving any child or children, or in case such child or children shall happen to die without attaining the age of twenty-one years, if sons, or twenty-one years, or day of marriage, if daughters, in the life-time of the plaintiff, Edward Keating, then the said annuities shall be transferred to the plaintiff Edward Keating, for his own use and benefit.

And in case the plaintiff, Edward Keating, shall happen to die in the life-time of the plaintiff, Ann Keating, and it

shall happen that there be no child, or children, of the plaintiff, Edward Keating, and Ann his wife, or that such child, and children, happen to die before they attain 21 years, or day of marriage, then the said annuities shall be transferred to the plaintiff, Ann Keating, her executors, administrators, or assigns.

The said Edward Keating also proposes, that £600, the residue of the said South Sea annuities, standing in the name of the defendant, Joseph Hudson, and all monies due from any of the defendants, and all other part of the estates of Isabella Pennymen, and Mary Pybus, deceased, (the annuity of £30 under the articles of the 8th of March 1789, only excepted), which shall remain after payment of the costs of this suit, and transfer of so much of the said South Sea annuities as aforesaid, shall be paid and transferred to him the said plaintiff, Edward Keating, for his own use and benefit, the better to enable him to carry on his trade or business of a common brewer, in the town of Hertford.

And the plaintiff craves leave to add to or alter this his proposal, as he shall be advised.

**The Form of a Proposal made by the Receiver
in a Cause for granting a Lease to a Tenant.**

In Chancery.

Between John Radcliffe, esq. and others, Plaintiffs;
and
Sir Charles Farnaby, and others, Defendants.

The proposal of Mr. William Willshire, the receiver of the rents and profits of the estates in this cause, for granting a lease of the farm, called Pirton Bury, part of the premises in question, situate in the parish of Pirton, in the county of Hertford, to John Charles Clarke, esq. the present tenant, pursuant to an order made in this cause, dated the 4th day of July, 1816.

The said Mr. Willshire proposes to grant a lease to the said J. C. Clarke, esq. for the term of 21 years, from Michaelmas 1816, at and under the yearly rent of 70*l.* payable quarterly, clear of all taxes, except the land-tax; and under and subject to the several covenants, conditions, and agreements, hereinafter-mentioned, that is to say, that the said yearly rent of 70*l.* shall be payable in the town of Hitchin, to commence at Michaelmas 1816, and be made payable by four equal quarterly payments, with reservation of all woods, under-woods, timber, and other trees, pollards, bowlings, saplings, and the lops and tops thereof, save and except the lops and tops of pollard of ten years growth, and all mines and minerals, with liberty for the landlord and his servants, horses, and carriages, at seasonable times, to sell, take up, dig, and carry away, the same, and to enter and view, and to do the necessary reparations, and for any other

reasonable cause: that the tenant should pay the sum of £100 yearly, for every acre, more or less, of ancient meadow, marsh, or pasture land, which he shall plough, to break up; and for every acre of arable land which he shall break up, plough, convert into tillage, or sow, or crop, or fallow, more than 77 acres, the sum of £100 yearly; the tenant shall pay the sum of £100 for every acre of land, which he shall plow, sow, or crop, thrice successively, during the last seven years of the term; and for every load of hay, or straw, which he shall sell, or convey off the premises, the sum of £10, unless the money arising therefrom be laid out in manure, and spread on the premises; proviso for re-entry, in case of non-payment of rent, or in case the tenant shall let, or assign the lease, or premises, or become bankrupt, or insolvent, or unable to pay his creditors, or in case of breach of covenants. And that in the said lease there shall be contained covenants on the part of the tenant, that the landlord may distrain, or sue for any of such additional rents, notwithstanding a receipt may have been given for any part of the said yearly rent of £70 accrued since any of the said additional rents may have been incurred, to pay all tithes, taxes, and other charges, (except land or king's tax,) to repair and keep in repair, with thatching, daubing, glazing and inside painting, and to find all materials for the purpose, (casualties of tempestuous winds only excepted,) and to find and provide beer for the workmen doing such repairs; to fetch all materials for repairs of all the premises, from Hitchin, or Hexton, or Biggleswade, or any other place, at like distance. Not to alter any boundaries, or external or internal fences, ditches, or divisions, and to maintain and keep up all hedges, ditches and fences, gates, stiles, dams and whelms, being allowed rough timber by the lessor, and bricks and lime, and to leave the same so repaired at the end of the said term; not to take above two crops of corn or grain, successively, from any part of the said premises, without giving the same one whole summer tilth, or laying the same down with clover, or

saint foin, (except crops of beans or peas, to be well and reasonably made;) nor plough, or break up, any of the ancient meadow, marsh, or pasture land, nor more arable at any time than seventy-seven acres; nor plough, break up, or use in tillage, or sow, or crop any land thrice successively, during the last seven years; nor to top, top-fell, or grub up, any trees, but to preserve the same, except pollards of ten years growth, or trees assigned for repairs: to embarn on the premises all the corn, hay, and stover, that shall grow thereon, and expend and use on the premises, all the hay, straw, and stover, that shall grow thereon; not to carry off the premises any muck, dung, manure, or compost produced thereon, but to expend and use the same on the premises where necessary, and leave what remains at the end of the term, without allowance; to leave in the last year not more than seventeen, or less than fifteen acres, well summer tilled, and fallowed with three whole tilths, and one-half tilth being allowed for the same 25s. an acre out of the last half year's rent; power for the landlord, or in-coming tenant, with servants, at the time of the tenant sowing his last Lent corn, the spring next before the expiration of the term, to enter and sow with hay, clover, or grass seeds, an equal quantity of land to that which the tenant shall, in the last year, have in fallow; tenant to harrow in the same in an husband-like manner, at the time of harrowing in his spring corn, sown in that year, being allowed 1s. an acre; covenant on the part of the lessor, that tenant may take sufficient and necessary firing, hedge-bote, and stake-bote, from the lops and tops of pollards, of ten years growth, but not under to be expended on the said premises; lessor to put and keep the house and buildings in good repair, except daubing, glazing, thatching, and inside painting. That the tenant shall be allowed out of the last half year's rent, 25s. an acre, for what land (not exceeding seventeen, or less than fifteen acres) shall be left at the end of the term, well tilled, and fallowed as aforesaid;

that the landlord shall provide rough timber, by assignment, and bricks, and lime as aforesaid, for gates and stiles, dams and whelms; and shall also assign the tenant a convenient place to fodder his cattle, to expend the stover on the premises till the Lady-day next after the end of the term; and that the tenant shall have the use of the barns till the same time, to thrash out his corn, with the usual covenant for quiet enjoyment.

And the said receiver craves leave to add to or alter this proposal, as he shall be advised.

A Proposal or Scheme for the Establishment of a Charity.

In Chancery.

Between John Scroope, esq. and others, Plaintiffs;
and

Thomas Eldridge, and others, Defendants.

A scheme for the application of the sum of £3000 and interest for the establishing a charity school, according to the will of John Eldridge, esq. deceased, the testator in the pleadings named.

The plaintiffs John Scroope, Samuel Creswick, and John Cossens, executors named in the last will and testament of the said John Eldridge, propose that the sum of £300, part of the said £3000, be laid out in the purchase of a range of building situate on the south-east side of a close or parcel of meadow ground on St. Michael's Hill in the parish of St. Michael in the city of Bristol, together with a small tenement, adjoining, which piece of ground is held by lease from the dean and chapter of the cathedral church of the holy and undivided Trinity of Bristol, for the residue of a term of forty years commencing

from the 18th day of May, 1757, the premises when purchased to be conveyed or assigned to the plaintiffs, and William Creswicke, Henry Earle, William Oliver, and John Tyler, all of the city of Bristol, esqrs. and Thomas Haynes, of Wick, in the county of Gloucester, esq. their executors, administrators, or assigns, in trust to permit such range of buildings to be used, as and for a charity school, and the small tenement to be used and enjoyed by the master and mistress for the time being of the said charity school.

And further propose that £2700, the residue of the said £3000, be laid out in the purchase of South Sea Annuities in the names of John Culliford, the present rector, Nathaniel Daniel, and John Pitman, the present churchwardens of the said parish of St. Michael, in the city of Bristol; In trust that they the said rector and churchwardens, or the majority of them, do provide a fit and able school-master to attend the said charity school, to teach and instruct the poor children hereinafter mentioned, in reading, writing, cyphering, and what else shall be thought fit by the said rector and churchwardens, or the majority of them. And out of the interest or dividends of the said annuity, to be purchased, to pay and allow unto such school-master for his labour the yearly sum of thirty pounds, by two equal half yearly payments; and that the said rector and churchwardens, or the majority of them, from time to time, provide a fit and able school-mistress to teach and instruct the poor children, in reading, knitting, spinning, needle-work, and what else shall be thought proper by the said rector and churchwardens; or the majority of them, and out of the interest or dividends of the said annuities to be purchased as aforesaid, allow unto such school-mistress for her labour, the yearly sum of £25, by two equal half yearly payments; the said master and mistress to attend the said school daily (holidays excepted) for six hours, or so many hours as the said

rector and churchwardens shall think fit, and to attend morning and afternoon every Sunday at the said intended school, and go at the usual hours to the parish church of St. Michael with the children, to hear divine service. And that out of the interest and dividends of the said annuities so intended to be purchased, the said rector and churchwardens, or the majority of them do provide books, pens, ink, firing, candles, and other things as shall in their judgment be necessary to be used in the said school. And further, that the said rector and churchwardens, or the majority of them, do thereout also pay, deduct, or retain all such costs, charges, and expences as they from time to time shall necessarily sustain or be put unto in the execution of the trusts, and after deducting such necessary costs and charges shall lay out and employ all the residue and remainder of the said interest or dividends of the said annuity, in clothing in a decent but frugal manner, so many poor girls, as such residue will extend to, such girls to be children of poor persons residing in the parishes of St. Michael's, St. Peter's, or Westbury upon Trim, one third of such children, or as near as may be to be elected out of each of the said parishes, and for want of such children, then to elect the children of poor persons residing in any adjacent parish or parishes as the said rector and churchwardens or the majority of them shall think fit. And upon further trust that the said rector and churchwardens, and their successors from time to time do apply (before at or after the expiration of the present or any future or subsequent lease or leases of the several parts of the said close whereon the said intended school and dwelling house are erected, to renew such lease or leases) for such further term as can or may be obtained and renewed therein, subject nevertheless to the trusts hereinbefore mentioned. And that all costs and charges of every such renewal, and all charges for repairs and amendments of the same shall, from time to

time be borne, paid and allowed, out of the interest or dividends of the said annuity, to be purchased as aforesaid, and in case the said lease or any future lease cannot be renewed, that then the said rector and church-wardens shall out of the aforesaid interest or dividends, purchase some other leasehold house or building, or some piece of ground held by lease for years, as near as conveniently may be to the aforesaid intended school to be conveyed to the plaintiffs and the said William Creswick, Henry Earl, William Oliver, John Tyler, and Thomas Haynes, their executors, administrators, or assigns, and shall convert such houses or buildings, into a school-house and dwelling for the said master and mistress, after the model and manner of the said new erected building, or as near as may be thereto. And that as often as the number of trustees hereinbefore named shall be reduced to the number of three, that the survivors shall as soon as convenient convey the said intended charity school and dwelling house, or such house so to be purchased, or built by or out of the said £300, or the interest or dividends of the annuities aforesaid, to nine other new trustees, to be nominated and appointed by them, to the use of the surviving trustees their executors, administrators, and assigns, subject to the several trusts and appointments as are hereinbefore nominated and appointed.

And the plaintiffs craves leave to add to or alter this scheme or proposal as they shall be advised.

Proposal for investing Money directed to be laid out with the Approbation of the Master to whom the Cause is referred.

In Chancery.

Between Mary Cole,
and

Plaintiff;

Arthur Radcliffe, esq. and others, Defts.

The Proposal of the plaintiff Mary Cole.

The said Mary Cole, the executrix of Charles Cole, the testator, has been endeavouring to find out a proper purchase of land wherein to invest the surplus of the said Charles Cole's personal estate, but hath not been able hitherto to procure the same: and as the sum of 597*l.* 2*s.* 7*d.* is by Master Harris's report made in this cause, dated the 20th of December, 1757, reported to be the balance of the said personal estate remaining in the plaintiff's hands, which by the order made on the hearing of this cause the 4th July, 1754, is directed to be laid out with the said master's approbation:

The plaintiff therefore proposes to invest the said sum of 597*l.* 2*s.* 7*d.* the balance remaining due in her hands, in bank 3 per cent. consol. annuities to be forthwith transferred into the names of Edward Radcliffe, of Devonshire square, London, esq. and Thomas Church, of the city of Hereford, esq. the new trustees appointed by the master in the room of the defendant Lewis Buckle, and the Rev. Edmund Yalden, clerk, who have declined to act in the trust reposed in them, by the will of the said testator Charles Cole.

And the plaintiff craves leave to add to, or alter, &c.

Amended Proposal for the Appointment of a Receiver where the Sureties have been rejected.

In Chancery.

Between Charles John Clarke, esq. Plaintiff;
and
William Lytton, esq. Defendant.

The plaintiff proposes Giles Rooke, of Ware, in the county of Hertford, esq. to be the receiver of the rents and profits of the estates in the pleadings in this cause mentioned.

And the said Giles Rooke proposes Thomas Hope Byde, of Ware Parke in the said county, esq. in the place of Thomas Whittington, of Stevenage, in the said county, inn-keeper, and victualler, and William Hale, of King's Walden in the said county, esq. in the place of Richard Whittington of the Swan inn, at Stevenage, aforesaid, hostler, to be his sureties.

The rental of the estates must be shewn before the appointment can be regularly approved of by the master, usually by affidavit: in some cases, a state of facts, or other proceeding will satisfy the master. The affidavit may be as follows:

“ John Doe, of, &c. maketh oath and saith, that the farms, lands, tenements and premises, in the pleadings in this cause mentioned, and of which a receiver is directed to be appointed, are now let at the clear yearly rent, of 256*l.* 4*s.* 8*d.* exclusive of rates, taxes, and all other deductions and outgoings.” (A rental in the form of a schedule is sometimes set out in the affidavit.)

RECEIVER'S ACCOUNT.

In Chancery.

Plaintiffs ;

Between Thomas Coward, esq. and others,
and

Defendants.

Lionel Seaman; and others,
The first account of George Lamb, the receiver of the rents and profits of the estate in question in this cause; from the time of his appointment pursuant to an order dated the 28d day of July, 1741, to Michaelmas, 1742.

Premises.	Tenants.	Arrears at Mich. 1741.	Annual Rents.	Receipts.	Arrears at Mich. 1742.	Observations.
A farm containing 128 acres of meadow and pasture land, situate in the parish of Frome, in the county of Somerset 28 acres of meadow land, next adjoining the above A farm of 180 acres of mea- dow and pasture, adjoining the above	George Booth	£ 320 0 0	£ s. d. 640 0 0	£ s. d. 306 0 0	£ s. d. 324 0 0	Several gates wanting, and the barns and outbuildings very much out of repair.
	William Crew	36 0 0	72 0 0	36 0 0	36 0 0	The paling and fences adjoining the turn- pike road wanting repair.
	Thomas Troutbeck	200 0 0	400 0 0	200 0 0	200 0 0	Gates and rails want- ing, and the stables out of repair.
		556 0 0	1112 0 0	542 0 0	570 0 0	

THE RECEIVER'S DISCHARGE.

Paid one Year's Land Tax and Chief Rent to Michaelmas, 1742	£	s.	d.
Allowed George Booth for Repairs	86	14	0
The Receiver's Poundage on £1112, at 1s. in the Pound]	63	10	2
The Receiver's Costs of Appointment, and passing Account	55	12	1
The Plaintiff's Costs	30	18	3
The Defendant's Costs	11	9	7
Receipt, Stamps, Postage, &c.	7	12	3
	0	19	10
	<hr/>		
	256	14	9

ABSTRACT OF THE FOREGOING ACCOUNT.

	£	s.	d.		£	s.	d.
Amount of rents	1112	0	0	Amount of disbursements	256	14	9
				Balance	855	5	3
					<hr/>		
					1112	0	0

RECOGNIZANCE.

Form of Recognizance entered into by a Receiver and his Sureties.

George Lamb, of Frome Selwood, in the county of Somerset, gentleman; Richard Shute, of Whatley, in the said county, gentleman; and Robert Haywood, of Frome Selwood, aforesaid, maltster, before the king in his Chancery personally appearing, acknowledged themselves and each of them acknowledged himself to owe to the right honourable John Verney, esquire, master of the rolls, and William Kinaston, esquire, one of the masters of the said court, £1400 of good and lawful money of Great Britain, to be paid to the said John Verney and William Kinaston, or one of them, their executors or administrators, and unless they shall so do they are willing and agree, and each of them is willing and agrees for himself, his heirs, executors and administrators, that the said sum of money shall be levied, recovered and received of each of them, and of and from all and singular their manors, houses, lands, tenements, hereditaments, goods and chattels of them, and of them, wherever they shall be found. Witness, our sovereign lord George, and others, guardians and justices of the kingdom, at Westminster, the fourth day of July, in the fifteenth year of the reign of his present majesty king George the second, and in the year of our Lord one thousand seven hundred and forty-one.

Whereas, by an order of the high court of Chancery, bearing date the 23d day of April, 1741, made in certain causes depending in the said court, wherein Thomas Coward, esq. is plaintiff, and Lionel Scaman, clerk, Edward Halliday, the right reverend the bishop of Bath and Wells, Peter Davis, esq. Edward Marton, gent. and George Lock, deceased, and Joseph Jesser, Robert Haywood, Richard Shute, and William Gaisford, assignees of a commission of bankruptcy against the said Edward Halliday, are defendants: and wherein Edward Martin is plaintiff, and the said Thomas Coward, and others, are defendants; and wherein the Lionel Scaman, clerk, is plaintiff, and the said Edward Marton, Edward Halliday, Joseph Jesser, Robert Hayward, Richard Shute, William Gaisford and Thomas Coward, William Phipps, Thomas Scott, William Nightingale, and Isaac Scott are defendants, and wherein Elnathan Hollway is plaintiff, and Edward Halliday and others are defendants. It was ordered, that William Kinaston, esq. one of the masters of the said court, should appoint a receiver to receive the arrears and growing rents and profits of the estates in question, and to allow him a salary for his care and pains therein, such person so to be appointed, first giving security to be approved of by the said master, and to be taken before a master extraordinary in the country, to be answerable for what he shall receive, and to account annually for, and pay what he shall so receive, as the said court shall direct. Now the condition of this recognizance is such, that if the above bound George Lamb shall and will duly and annually account for what he shall so receive out of the arrears and growing rents and profits of the said estates, and pay what he shall so receive, as the said court shall direct, and do and perform his office of receiver in all things according to the true intent and meaning of the said order, then this

recognizance to be void, or else to be and remain in full force and virtue.

Taken and acknowledged by the above-named George Lamb, Richard Shute, and Robert Haywood, at my chambers in Symonds Inn, Chancery lane, in the county of Middlesex; the fourth day of July, one thousand seven hundred and forty-one.

William Kinaston.

STATE OF FACTS.

Form of State of Facts under a Reference whether a Party is an Infant and Mortgagee within the 7th Ann, and to whom the Mortgage Money is due.

20th Feb. 1735. At a court baron of the manor of Trellog, John Botham, John James, and Mary Edwards, by Evan Walter their attorney, and Obadiah Edwards and Mary his wife, the said Mary being solely and secretly examined, surrendered a messuage with the appurtenances and divers parcels of land, and a moiety of the hay house, and the fourth of one acre of land thereto belonging, in the parish of Penalt, and county of Monmouth, to the use of Peter Dowding and John Rosewell, their heirs and assigns according to the custom of the manor, and on the 16th of April, 1736, Dowding and Rosewell were admitted to the said copyhold premises.

By indenture of five parts, dated the same 20th Feb. 1735, made between John Botham, of the first part, John James, and Ann his wife, of the second part, Mary Edwards, Obadiah Edwards, and Mary his wife, of the third part, Sarah Symonds, of the fourth part, and Peter Dowding and John Rosewell, of the fifth part; reciting a former mortgage by surrender and defeazance, and that 337*l.* 10*s.* was then due thereon to John James, and Ann his wife, it is witnessed, that in consideration of 337*l.* 10*s.* to James and his wife, and of 62*l.* 10*s.* to Mary Edwards and Obadiah Edwards and his wife, paid by Dowding and Rosewell, being part of the trust money mentioned in an indenture of the 22d of

July, 1730, that such surrender had been made to Dowding and Rosewell, as aforesaid, subject to a proviso of redemption of Obadiah Edwards, his heirs or assigns, on payment to Dowding and Rosewell, their executors, administrators or assigns of the £400, and interest, on the days in the said indenture mentioned, and after payment, that Dowding and Rosewell, their heirs and assigns shall stand seized of the premises for such uses as Obadiah Edwards should by deed or writing appoint, and in default to the use of Obadiah Edwards, his heirs and assigns.

That Obadiah Edwards is since dead, leaving Lavinah now the wife of James Phillips, his only child and heir at law, who is become entitled to the mortgaged premises subject to the £400, and interest thereon. That Peter Dowding, who survived John Rosewell, is dead, leaving Peter Dowding, his grandson, his *heir at law, an infant, in whom the legal estate in the mortgaged premises is now vested.*

That by indenture of the 22d July, 1730, executed by Joseph Simmons, and Sarah Grant, his intended wife, the trust monies therein mentioned, were assigned to Dowding and Rosewell, and declared to be for the sole and separate use of the said Sarah, to be disposed of by her by any writing purporting to be a will, as she should bequeath or appoint.

That Sarah Grant, afterwards Simmons, is since dead, having made her will, dated the 14th day of April, 1755, and thereby, after disposing of £40, gave the rest and residue of her personal estate to her son-in-law George Chard, and Samuel Hardwicke, in trust for her daughter Sarah Chard during her life, for her separate use, to be placed out by them, or the survivor, as her said daughter should direct, and after her decease for the benefit of the said George Chard for his life, and immediately after his decease, in trust for all the children of her said

daughter, as should be living at his death, in equal shares, with divers limitations over, and made George Chard and Samuel Hardwicke executors.

That George Chard alone proved the will, and letters of administration, with the said will annexed, were granted to him. That George Chard is since dead.

That the principal sum of £400 remains due on the said mortgage, with interest at 5 per cent. from the 20th day of Feb. 1760, which Sarah Chard, widow, the administratrix, with the will annexed of the said Sarah Simmons, is entitled to receive upon the trusts of her said will.

WRITS.



Writ of Privilege for a Clerk in Court.

George the third, by the grace of God, of the united kingdom of Great Britain and Ireland king, and so forth, to all and singular justices, judges, sheriffs, escheators, mayors, aldermen, bailiffs, constables, and to all other our officers, ministers, and liege people, whomsoever, as well within liberties as without, to whom these presents shall come greeting: Whereas as well for the royal dignity of us and our progenitors heretofore kings of England, as from an ancient custom in the High Court of Chancery, of us and our progenitors aforesaid time out of mind obtained and hitherto allowed and approved of, the chancellor of England, or keeper of the great seal of England, for the time being, and also all other resident officers, clerks, and ministers, of our same court of Chancery, who are present and ready to obey our pleasure, and daily attendant in our court aforesaid, for the public good of our kingdom in their man servants, lands, tenements, estates, goods and chattles, ought to be freed and quieted as anciently they used to be according to the privilege and liberties of our said court of Chancery, time immemorial used, and ought not by any means to be arrested, impleaded, imprisoned, drawn or compelled to appear or answer before any of our justices, judges, officers and secular ministers whomsoever (except before our chancellor of England, or keeper of the great seal of England for the time being) upon any pleas,

plaints, trespasses, or demands whatsoever, which do not touch our royal person (pleas of freehold, felonies, and appeals only excepted) or by reason of any summons, or impannelling of a jury in any assizes, or recognizances before the same justices, judges, officers, or ministers, to be taken or elected, to execute any office of collector of subsidies, tenths or fifteenths, churchwarden, constable, tything-man, scavenger, surveyor of highways, or overseer, or collector for the poor, or to watch or ward, or any other office, service, or attendance elsewhere than in our court aforesaid, (whereby they may be withdrawn from our said court against their wills, contrary to what they formerly used to be, which said custom, privilege, and liberties, in the parliament of the lord Edward the third our progenitor, late king of England, held at Westminster, in the 18th year of his reign, by the said king, and by his earls and barons, and others in the said parliament were admitted, allowed, and approved of, as by indorsement on a certain petition, then before the said king in the said parliament exhibited, and in the rolls of the said parliament inrolled, it more fully appeareth, we the said custom, liberties, privileges, and jurisdiction aforesaid, being resolved inviolably to observe, and being unwilling that the officers, clerks and ministers of our chancery aforesaid should be burthened, contrary-wise, than heretofore they used to be, do command, and strictly enjoin ye and every of ye, that George Birch, gentleman, one of the ministers in our said court of Chancery, who with the utmost vigilance and diligence us and our people doth daily serve and intend to serve, ye do not contrary to the tenor of the liberties and privileges aforesaid, molest or aggrieve, neither permit him to be molested or aggrieved by others in any manner, neither to appear or to answer before any justices, judges, officers, or secular ministers whomsoever, except before our chancellor of Great Britain.

or keeper or keepers of the great seal of Great Britain, for the time being, upon any pleas, complaints, trespasses, or demands, which touch not our person (pleas of freehold, felonies, and appeals only excepted,) nor by reason of any summons or impanuelling may ye or any of ye him compel in any office or collector of subsidies, tenths, or fifteenths, church-wardens, constable, tything-man, scavenger, surveyor of the highways, or overseer or collector for the poor, may ye him chöose neither to watch or ward, or to any other office, service, or attendance, elsewhere than in our court aforesaid, to be done or exercised may ye or any of ye him by any means compel. And if by reason thereof ye or any of ye on the said George Birch have made any distress, that ye and every of ye do without delay release the same to him, so that the said George Birch, by ye or any of ye contrary to the term of the liberties and privileges aforesaid, or any of the premises, may not be molested or aggrieved, neither so far as lies in your power, to hinder it may ye suffer him to be molested or aggrieved by any others. Witness ourself at Westminster the nineteenth day of January, in the twenty-fourth year of our reign.

Sewell Thomas.

* By the lord high chancellor of Great Britain.

ORDERS

OF THE

HIGH COURT OF CHANCERY,

Made by the Right Hon. Thomas Lord Erskine, Lord-High Chancellor of Great Britain, by and with the Advice and Assistance of the Right Hon. Sir William Grant, Knt. Master of the Rolls, relating to the Fees of the Clerks in Court, and Solicitors of the said Court.

FEES OF CLERKS IN COURT.

Thursday, 26th day of February, 1807.

WHEREAS the fees and rewards taken by the sworn clerks and waiting clerks of this court, for the business transacted by them are of great antiquity: And whereas the same have been at different times regulated by the orders of this court, as occasion required: And whereas it has been humbly represented, that by the great alteration of the times, and the heavy stamp duties and various taxes, and other heavy charges and expences of late years imposed, that the present fees and rewards, allowed and taken under the orders of the court, are greatly inadequate to the duties to be performed by them, and to the support and maintenance of the practisers of a liberal profession; and it being for the benefit of the suitors that skilful and proper persons should be encouraged in the due and faithful discharge of the duties of those offices, by a reasonable recompence and reward for their services: And the right honourable Thomas Lord Erskine, lord high chancellor of Great Britain, having taken the matters

aforesaid, into his serious consideration, and a schedule of the increased fees, hereunder written and subscribed by the sworn clerks and waiting clerks, having been humbly submitted to his lordship, who being of opinion the same are just and reasonable: it is therefore, this present 26th day of February, in the 47th year of the reign of his majesty, King George the 1st hird, and in the year of our Lord 1807, ordered and decreed by the said Lord Erskine, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable Sir William Grant, knight, master of the rolls, That the said schedule of fees be adopted; and that all officers, ministers, clerks, and other persons belonging to this court, and others whom it may concern, do observe and pay obedience hereto: and it is further ordered, that this order be entered with the register, and that copies of the said schedule of fees be forthwith written on parchment, in a fair legible hand, and set up in the office, of the six clerks and register, and in the other offices of this court, to which recourse may be had on all necessary occasions; and that the said schedule of fees have commencement from the 26th day of February, in the year of our Lord 1807.

ERSKINE. C.

W. GRANT, M. R.

FEES OF CLERKS IN COURT.

SCHEDULE.

	£	s.	d.
For entering in the office and clerk in court's books, the parties' names, and filing every bill, exclusive of term fee	0	7	4
For an attachment	0	12	2
For an attachment with proclamations or distringas	0	13	11
For a commission of rebellion	1	7	10

	£	s.	d.
For a sequestration - - -	1	3	2
For a ne exeat regno - - -	1	2	5
For a habeas corpus - - -	1	1	7
For a dedimus to take an answer - - -	0	16	11
For every special dedimus by order of court	1	3	7
For drawing, engrossing, and filing a replication	0	12	8
For a commission to examine witnesses with the schedule of oaths - - -	1	6	9
For joining in commission on behalf of the plaintiff for the examination of witnesses, if with more clerks in court for defendants than one - - -	0	6	8
And for the defendants each set who shall join therein - - -	0	6	8
For every special commission for dividing lands	1	6	10
For every common injunction - - -	1	14	10
For every special injunction more than the com- mon, when the same does not exceed 20 folios	0	6	8
For drawing and engrossing special injunction and docquet, when the same exceeds 20 folios, exclusive of parchment and duty, &c. per folio	0	1	4
For every term the cause is in agitation, a term fee of - - -	0	6	8
For entering the appearance of every defendant who appears separately, exclusive of the term fee - - -	0	6	8
For entering the appearance of more than three defendants, then at the rate of 6s. 8d. for every three defendants (exclusive of the term fee)	0	6	8
For office copies of bills, answers, exceptions, depositions, and other records, including duty and paper, per folio - - -	0	1	2
For filing every joint or separate plea, answer, or demurrer (exclusive of the term fee)	0	3	4
For giving and entering every rule, exclusive of duty - - -	0	7	8

	£	s.	d.
For every day a cause is in the paper for hearing	0	3	4
For every day a cause, appeal, rehearing, or further directions shall be in hearing, or in the paper after part heard	0	6	8
For every day a plea, demurrer or exceptions, shall be in hearing, or in the paper after part heard	0	6	8
For every other attendance in court when required by the proper client or solicitor, but not otherwise	0	13	4
For entering an appearance for the parties, with the register, according to any order of court	0	6	8
For signing a consent to any petition, agreement, election, or to enlarge publication, or to pass same	0	6	0
For every certificate to be signed by the six clerks	0	3	4
For examining all copies with the records in order for evidence, for each examination, if or 40 sheets under	0	6	8
But if more than 40 sheets, then for examining each sheet	0	0	2
For the exemplification of every record, per skin, exclusive of vellum, parchment, and duty, &c.	1	13	4
For drawing and engrossing the docquet and master's certificate	0	6	8
For every writ of assistance to put the party into possession, pursuant to decree, &c.	1	6	6
For copies of all deeds, writings, papers, letters, and accounts left with the clerk in court, pursuant to an order of court, or referred to in any of the pleadings, for each sheet	0	3	6
For every certiorari, procedendo, or supersedeas	0	18	10

FEES OF SOLICITORS IN CHANCERY. 483

	£	s.	d.
For every attendance at Westminster on the ap- pointment of a guardian -	0	13	4
For every attendance at Lincoln's Inn Hall, or the Rolls, for the like purpose -	0	6	8
For taking off the file, pursuant to order, any record, and for attending with the same in court at the Rolls or the master's, &c.	0	13	4
For attending with the same in any other court or place in London or Westminster, per day	2	2	0
For every attendance with the same in the coun- try, at the rate of two guineas per day, exclu- sive of expenses - -	2	2	0
For amending the record of a bill where the same is not a new engrossment -	0	13	4
For amending every office copy of a bill	0	6	8
For every other fee not mentioned as heretofore.			

ERSKINE, C.

W. GRANT, M. R.

FEES OF SOLICITORS IN CHANCERY.

Thursday, the 26th day of February, 1807.

WHEREAS it hath been humbly represented unto the right honourable Lord Erskine, lord high chancellor of Great Britain, on behalf of the solicitors of the suitors of this court, that by the great alteration of the times, and the heavy stamp duties, and various taxes, and other heavy charges and expenses of late years imposed, the present fees and rewards now allowed and taken by the solicitors of this court, are greatly inadequate to the duties to be performed by them, and to the support and maintenance of the practisers of a liberal profession; and it being for the benefit of the suitors, that skilful, atten-

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tive and proper persons should be encouraged in the due and faithful discharge of the business and employment of solicitors, intrusted to their care by the suitors, by a reasonable recompense and reward for their services, and a schedule of increased fees, hereunder written, subscribed by the sworn clerks and waiting clerks (and who, by virtue of their offices, are also entitled to act as solicitors of the court) having been submitted to his lordship's consideration, who being of opinion the same are just and reasonable :

Is is, therefore, this present 26th day of February, in the 47th year of the reign of his majesty king George the Third, and in the year of our Lord 1807, ordered and decreed by the said Lord Erskine, lord high chancellor of Great Britain, by and with the advice and assistance of the right honourable Sir William Grant, knight, master of the Rolls, That the said schedule of solicitors' fees be adopted, and that all officers, ministers, clerks, and other persons belonging to this court, and others whom it may concern, do observe and keep due obedience hereto ; and it is further ordered, that this order be entered with the register, and that copies of the said schedule of solicitors' fees be forthwith written on parchment, in a fair and legible hand, and set up in the offices of the six clerks and register, and in the other offices of this court, and that the said schedule of solicitors' fees have commencement from the day of the date hereof.

ERSKINE, C.

W. GRANT, M. R.

FEES OF SOLICITORS IN CHANCERY.

SCHEDULE.

	£	s.	d.
Drawing warrant to prosecute, and filling up			
same on a 5s. stamp, each	0	2	6

	£	s.	d.
Drawing præcipe for subpœna, and attending to leave same at subpœna office, and afterwards for same	0	6	8
Attending taking instructions for bills, answers, interrogatories, and examinations, each	0	13	4
Attending taking instructions for special affidavits	0	6	8
For drawing bills, answers, interrogatories, and affidavits, per folio of 90 words, including fair copy	0	1	0
For engrossing same on parchment	0	0	6
For engrossing affidavits on paper	0	0	4
For fair copies of all pleadings upon record, of 90 words, per folio	0	0	4
For abbreviating the same, per folio	0	0	4
For fair copies of all briefs	0	3	4
For attending each counsel with briefs, for hearing of a cause, and on special petitions and motions	0	6	8
For attending counsel with instructions, and the register to draw up order, and entering, on common petitions and motions of course	0	6	8
For attending Lord Chancellor or Master of the Rolls's Secretary, to present every special petition, and afterwards for same	0	6	8
For attending the court every day on which a cause or petition stands in the paper	0	10	0
Attending when heard	0	13	4
For attending the court on every special motion, each day	0	13	4
For service of every order or petition on a clerk in court	0	2	0
For copy and service of every master's warrant or summons on a clerk in court	0	1	0
For personal service of ditto, on a party	0	10	0

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	£	s.	d.
For service of ditto on a solicitor, where no clerk in court	0	2	6
For attending defendants on their being served with subpoenas, and taking instructions to appear	0	6	8
For drawing every warrant to defend	0	2	6
For attending at the public office to get messenger sworn upon the return of all commissions	0	6	8
For attending every witness to be sworn and examined in town before examiner	0	6	8
Attending with defendant or deponent to get answer or special affidavit sworn	0	6	8
For attendance on every master's warrant or summons	0	6	8
For every attendance on the register, for directions to the accountant general to sell or transfer stock	0	6	8
For drawing requests to the accountant general to lay out cash on each fund	0	2	6
Attending on accountant general to lay out ditto	0	6	8
For every attendance at the bank, to pay in money, and afterwards on accountant general to file cashier's receipt	0	13	4
For attendances on the register to settle minutes of decrees, and decretal orders	0	13	4
For attending the register, on settling decrees, examining and passing same, and orders on further directions	0	13	4
For attending the register, on passing all other special orders	0	6	8
For attending to leave decrees and decretal orders to be entered, examining and taking the same away	0	6	8
For attending to file special reports at the report office, and afterwards for the copy	0	6	8

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£ s. d.

For attending to join and strike commissioners names, for the examination of witnesses, for the solicitor who has not the charge of the commission	0	6	8
For attending to bespeak every special writ or special commission that issues in a cause (except subpoenas)	0	6	8
Drawing notice of taking answer or examination, and copy	0	3	6
Attending two commissioners to sign the same	0	6	8
Service thereof not exceeding two miles	0	6	8
Ditto at a greater distance than two miles, 1s. per mile, but not to exceed 1l. 1s.			
For attending to take answers or examinations, each commissioner	0	13	4
For attending the execution of commissions for the examination of witnesses, each commissioner and each solicitor per day	2	2	0
For each commissioner's clerk, as engrossing clerk	0	15	0
For attending to read over engrossment of answers, or examinations, previous to being sworn, if the same does not exceed 20 folios	0	6	8
For every additional 50 folios	0	6	8
For attending the master for every certificate to be signed by him, and for filing same	0	6	8
Drawing instructions for all advertisements to be signed by the master, and afterwards for same	0	6	8
Attending to get same inserted in Gazette	0	6	8
For drawing out caveat against signing and enrolling every decree and order	0	2	6
Attending entering caveat with secretary of decrees, &c.	0	6	8
For perusing abstracts, every three brief sheets	0	6	8
For perusing the draft of every deed, for each skin	0	6	0

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	£	s.	d.
For examining the ingrossment, with the draft, for every three skins - -	0	10	0
For making all attested copies, examining and at- testing same per folio - -	0	0	6
Instructions for every special petition	0	6	8
Drawing same, per folio, and fair copy	0	1	0
Engrossing - -	0	0	4
Copies to serve	0	0	4
For drawing special notices of motion	0	2	0
Copy and service on every clerk in court, each	0	2	0
For drawing charges and discharges, state of facts and bills of costs and fair copy for mas- ter, per folio - -	0	0	8
Term fee (exclusive of clerk in court's fee)	0	10	0
Letters and messengers, per term -	0	5	0

N. B. The same fees and allowances, as above specified, to be made and allowed in all matters of lunacy and bankruptcy, except the fee for attending the court upon bankrupt petitions, whilst in the paper, which is to remain as heretofore, namely, 6s. 8d. per day, till the day the petition is heard, and on that day 13s. 4d. to be allowed.

ERSKINE, C.
W. GRANT, M. R.

22d April, 1811; Reg. Lib. B. 1810, fo. 564.

*" In the Matter of the Suitors in the High Court of
Chancery.*

" WHEREAS Thomas Pierse and John Nursey Dan-
" cer, Esquires, examiners of this Court, and David
" Evans and Charles Abbot Dancer, sworn copying
" clerks to the said examiners, did, on the 8th day of

“ December, 1810, prefer their petition unto Us, there-
 “ by stating, that by an Order, bearing date the 19th
 “ day of July last, made upon the petition of the peti-
 “ tioners, It was ordered, that it should be referred
 “ to Samuel Compton Cox, *John Springett Harvey,
 “ and William Alexander, Esquires, three of the mas-
 “ ters of this Court, to consider and report in what
 “ manner it would be fit and proper, the business of
 “ the examiners’ office should be equally divided be-
 “ tween the Petitioners, Thomas Pierse and John
 “ Nursey Dancer, or such other examiner or exami-
 “ ners, if any, as might in future be appointed un-
 “ der and by virtue of the provisions of a certain act
 “ of parliament, made and passed in the 50th year
 “ of the reign of his present majesty king George the
 “ third, intituled, ‘ An act for building certain offices
 “ for the examiners, cursitors, clerk of the crown, and
 “ clerks of the petty-bag of the high court of Chan-
 “ cery, and for making certain regulations in the ex-
 “ aminers’ office of the said court, and for making pro-
 “ vision for such of the examiners, deputy examiners,
 “ and clerks, as, from length of service, or from age
 “ or infirmity are, or shall be incapacitated for the
 “ due execution of their office; and for making provi-
 “ sion for other officers of the said court, and for mak-
 “ ing other payments in respect of the said offices, and
 “ what rules and regulations would be necessary and
 “ proper to adopt and be made, in order that witnesses
 “ on different sides of the same cause might, so far as
 “ the same should or might be practicable, be examined
 “ by different examiners.’(a) And it was further or-
 “ dered, the said masters should also inquire and cer-

(a) In 1806 the Court of Chancery in Ireland made an order of court, that the same examiner was not to examine and cross-examine in the same cause, nor to act on behalf of both parties. 2 Sch. & Lef. 739.

“ tify what in their opinion would be the proper periods
“ and hours of attendance for the petitioners in their said
“ office, and what were the duties of the petitioners, and
“ what directions would be necessary and proper to be
“ given as to the distribution of the business of the said
“ office; and also what fees and emoluments the petition-
“ ers should have and be entitled to receive from the
“ suitors of the said court for the business done by the
“ petitioners respectively, in or about the execution of
“ their said offices, and after the said masters should
“ have made their report, such further order shall be
“ made therein as should be just. That the said Samuel
“ Compton Cox, John Springett Harvey, and William
“ Alexander, Esquires, the masters of this court, to
“ whom the said matter was referred, by their report
“ made in this matter, bearing date the 29th day of No-
“ vember last, certified, that they were of opinion that it
“ would be proper to adopt as a general rule, that the
“ business of the examiners office should, as nearly as
“ could be, be equally divided between the petitioners,
“ Thomas Pierse and John Nursey Dancer, and such
“ other examiners as might in future be appointed; and
“ that as to the rules to be adopted for that purpose,
“ and also for securing that the witnesses on different
“ sides of the same cause might be examined by different
“ examinees; they were of opinion that the interrogato-
“ ries which should be first brought into the examiners
“ office in every cause in which the surname of the
“ plaintiff, or of the plaintiff first named, should begin
“ with any of the letters of the alphabet from A. to K.
“ inclusive, should be directed to be delivered to the
“ senior examiner for the time being; and that the in-
“ terrogatories, which should be first brought into the
“ office in every other cause, should be delivered to the
“ junior examiner for the time being, and that all the
“ witnesses on behalf of the parties exhibiting such in-
“ terrogatories should be examined by the examiner to

“ whom the interrogatories should have been so delivered, and that all interrogatories in the same cause for the adverse parties, should be delivered to the other examiner, and all witnesses produced on their behalf should be examined by him; and that where any interrogatories on behalf of defendants in a cause, not being all the defendants in that cause, should, in pursuance of the regulations above-mentioned, have been delivered to any examiner, all interrogatories exhibited on behalf of any other defendants, should be delivered to the same examiner, and he should examine the witnesses produced on behalf of such defendants: and that all interrogatories for the cross-examination of any witnesses should be delivered to the examiner who did not examine such witness in chief, and he should examine the said witness thereupon.(a) But they humbly certified, that those regulations would be effectual, only so long as the number of examiners was confined to two, as at present; and that if two examiners only should be found unequal to transact the business, and an increase in the number should be found necessary, other regulations would be requisite to effectuate the same purpose. And as to the periods and hours of attendance, they were humbly of opinion, that the office should open in every year on the day next after the Epiphany, which shall not be a Sunday, and should continue open to the Thursday next before Easter day inclusive, and should open again on Monday next after Easter week, and conti-

(a) Vide the preceding note (a). In the ordinance passed by Oliver Cromwell and his council for the regulation of the Court of Chancery (see ante, note (3) to order, 29th June, 1654) is the following section: “ That one of the examiners shall examine the witnesses of the plaintiff’s part, and the other the witnesses of the defendant’s part, if any be produced to be examined in court.” Scob. Ordin. p. 326.

“ nue open to the day before Whit-sunday inclusive, and
“ should open again next after Whit-sun week, and
“ should continue open to the day next before Christmas
“ day; (not being a Sunday, inclusive) and that during
“ all the time above specified, the said office should be
“ open and all the persons employed therein should at-
“ tend, except on such days as shall be kept as close
“ holidays, either at the six clerk’s office or at the public
“ office in Southampton buildings. And also except
“ every Monday, Friday, and Saturday from the last
“ seal after Trinity term to the first seal before Michael-
“ mas term, but that it should not be required to keep
“ the said office open on any day which should be kept
“ as a close holiday, either at the six clerks’ office, or
“ at the public office in Southampton buildings, or on
“ any Monday, Friday, or Saturday, between the last
“ seal after Trinity term, and the first seal before Michael-
“ mas term. And they were further of opinion that the
“ hours of attendance during the period above specified
“ (except from the last seal after Trinity term to the
“ first seal before Michaelmas term) should be from ten
“ in the morning to four in the afternoon; and that
“ the hours of attendance from the last seal after Tri-
“ nity term to the first seal before Michaelmas term,
“ should be from eleven in the morning to three in the
“ afternoon. And as to the fees and emoluments which
“ the examiners and their clerks ought to receive from
“ the suitors of the court, they humbly certified, that
“ they had framed a table thereof, which they had an-
“ nexed to their report; and as to the duties of the
“ petitioners, they humbly certified that it was the duty
“ of the examiners to examine all witnesses in any cause
“ in the Court of Chancery, upon the interrogatories
“ delivered to them; and of the copying clerks to make
“ copies of the depositions; and that it was also the duty
“ of all the said persons to preserve the records of the
“ said office, and to do all the other business for which

“ fees were allowed them in the table of fees annexed
 “ to their said report ; and which table of fees is as
 “ follows, viz.

	To the examiner.			Out of which the examiner is to pay the copying clerk.		
	£	s.	d.	£	s.	d.
Filing interrogatories -	0	7	4	0	1	0
Office copy, besides stamps, per folio -	0	1	2	0	0	3
Every witness sworn and examined, including oath, but exclusive of duty -	0	5	0	0	1	0
Every certificate signed by exami- ner -	0	3	4	0	1	0
Every witness re-sworn (including oath) -	0	2	6	0	1	0
Ditto sworn, and not examined (in- cluding oath) -	0	5	0	0	1	0
Every witness sworn and examined, abroad, (besides coach-hire and reasonable expences) -	1	7	8	0	6	8
If more than five miles from the examiners' office, for the first day -	2	15	4	0	18	4
For every other day -	2	2	0	0	0	0
Every witness examined on close ho- lidays -	1	7	8	0	6	8
Attending the Lord Chancellor, or Master of the Rolls, with record, per day -	1	1	0	0	0	0
Ditto any master at his office	0	10	6	0	0	0
Ditto with record, in any other court, or place in London or Westminster, per day	1	1	0	0	0	0

	To the examiner.			Out of which the examiner is to pay the copying clerk.		
	£	s.	d.	£	s.	d.
If in the country per day, besides expences	2	2	0	0	0	0
Inspection of depositions	0	6	8	0	3	4
For drawing every folio of depo- sitions where no office copy taken, when two terms shall have elapsed without the examination of any witness, besides duty	0	0	10	0	0	0
This to to be deducted, office copy be afterwards taken.						

*The following fees are to be paid to the copying
Clerk, viz.*

	Examiner.			Copying clerk.		
	£	s.	d.	£	s.	d.
Every witness sworn abroad, be- sides coach hire and expences	0	0	0	0	6	8
But if more than five miles distant from the examiners' office	0	0	0	0	13	4
Every interrogatory added	0	0	0	0	1	0
Subpœna notice	0	0	0	0	1	0
Examining copy depositions, with record on trial at law, if forty sheets or under	0	0	0	0	6	8
Ditto if more than forty sheets, for each sheet	0	0	0	0	0	2
Searching book for causes	0	0	0	0	1	0
Ditto for depositions	0	0	0	0	2	6

“ And the petitioners therefore prayed that the said
“ report might be confirmed, and that we would

“ order, that they might be entitled to have, receive,
“ and take from the suitors of this honourable court,
“ for the business done by them respectively, the several
“ fees mentioned and specified in the said schedule,
“ or table of fees, or that we would make such further or
“ other order therein, as to us should seem meet:
“ Whereupon having taken into consideration the said
“ petition and report, we do order, that the said master's
“ said report be confirmed; and that the petitioners
“ be entitled to have, receive, and take from the suitors
“ of this court, for the business done by them respectively,
“ the several fees mentioned and specified in the
“ schedule, or table of fees. And we do further order,
“ that if any examiner shall have, take, or receive
“ any fees, gratuities, or emoluments whatsoever from
“ the suitors of this court, not warranted or allowed by
“ this order, such examiner or clerk so offending, shall
“ be liable to be removed from his said office by this
“ court, and be incapable of ever thereafter holding
“ any office in or under this court. And we
“ do further order, that this order be entered with the
“ register, and that copies thereof be affixed and set
“ up in the examiner's office, six clerk's office, and register's
“ office of this court.(a)

“ ELDON, C.

“ GRANT, M. R.”

(a) Ord. Canc. Beam. Ed. 475

A TABLE

OF THE

DAYS OF HEARING CAUSES, MOTIONS, &c.

Before the Lord Chancellor, Vice Chancellor, and Master of the Rolls.

TERM TIME.—BY THE LORD CHANCELLOR.

Causes.—In Term Time, every Monday, Tuesday, and Friday, are Days for hearing Causes at Westminster, by the Lord Chancellor.

Seal Days.—Every Tuesday, Thursday, and Saturday, in Term Time, are Seal Days.

The first and last Days of the Term are Days for sealing Writs and Motions only.

Further Directions.—Every Wednesday is a Day for further Directions, Exceptions, Demurrers, Pleas, &c.

Motions.—Every Thursday in Term is a Day for Motions, except in the first or last Week of the Term, and then it is a Day for Causes.

All the Days in Term, when the Court sits, are Days for Common Motions, which are moved after the Causes are heard, just before the rising of the Court.

Rehearings.—Saturdays, and Petitions in Bankruptcy.

Petitions.—The last Saturday in Term are usually heard.

VACATION.

Motions in the Vacation.—In the Vacation, the General Seal Days only, appointed by the Lord Chancellor, are Days for Motions.

Petitions.—The next Day after the last Seal both before and after the Term is usually appointed for Petitions. The last Saturday in Term is a Day for Cause Petitions.

TERM TIME.—BY THE VICE CHANCELLOR.

Causes.—In Term Time, every Monday, Tuesday, and Friday, are days for hearing Causes at Westminster by the Vice Chancellor.

The first and last Days of the Term for Motions only.

Further Directions.—Every Wednesday is a Day for further Directions, Exceptions, Demurrers, Pleas, &c.

Motions.—Every Thursday in Term is a Day for Motions, except in the first or last Week of the Term, and then it is a Day for Causes.

All the Days in Term, when the Court sits, are Days for Common Motions, which are moved after the Causes are heard, just before the Rising of the Court,

Rehearings.—Saturdays, and Petitions in Bankruptcy, Petitions in Causes, the last Saturday in Term.

VACATION.

Motions in the Vacation—In the Vacation, the general Seal Days only, as appointed by the Lord Chancellor, are Days for Motions.

Petitions.—The next Day after the last Seal both before and after the Term, is usually appointed for Petitions.

AT THE ROLLS.—TERM TIME.

Causes, Rehearings, Further Directions, Pleas, Demurrers, and Exceptions—In Term Time, every Monday, Tuesday, and Thursday, are Days for hearing Causes, &c. at the Rolls by the Master of the Rolls, at six o'Clock in the Evening.

AFTER TERM.

Petitions.—The Evening before and Morning after Term, are usually appointed as general Days for hearing Petitions at the Rolls.

Causes, Rehearings, further Directions, Pleas, Demurrers and Exceptions.—And from hence Causes, &c. which till the first Seal are heard in the Morning, and afterwards in the Evening. Another general Petition Day is usually about the last Seal.

Consent Causes and Petitions—His Honour appoints a Day every Week during Term, and the Seals, for hearing Causes and Petitions by Consent.

Motions of course are allowed to be made the day after term.

The gift seal has been discontinued by the present Lord Chancellor.

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